



This is a digital copy of a book that was preserved for generations on library shelves before it was carefully scanned by Google as part of a project to make the world's books discoverable online.

It has survived long enough for the copyright to expire and the book to enter the public domain. A public domain book is one that was never subject to copyright or whose legal copyright term has expired. Whether a book is in the public domain may vary country to country. Public domain books are our gateways to the past, representing a wealth of history, culture and knowledge that's often difficult to discover.

Marks, notations and other marginalia present in the original volume will appear in this file - a reminder of this book's long journey from the publisher to a library and finally to you.

Usage guidelines

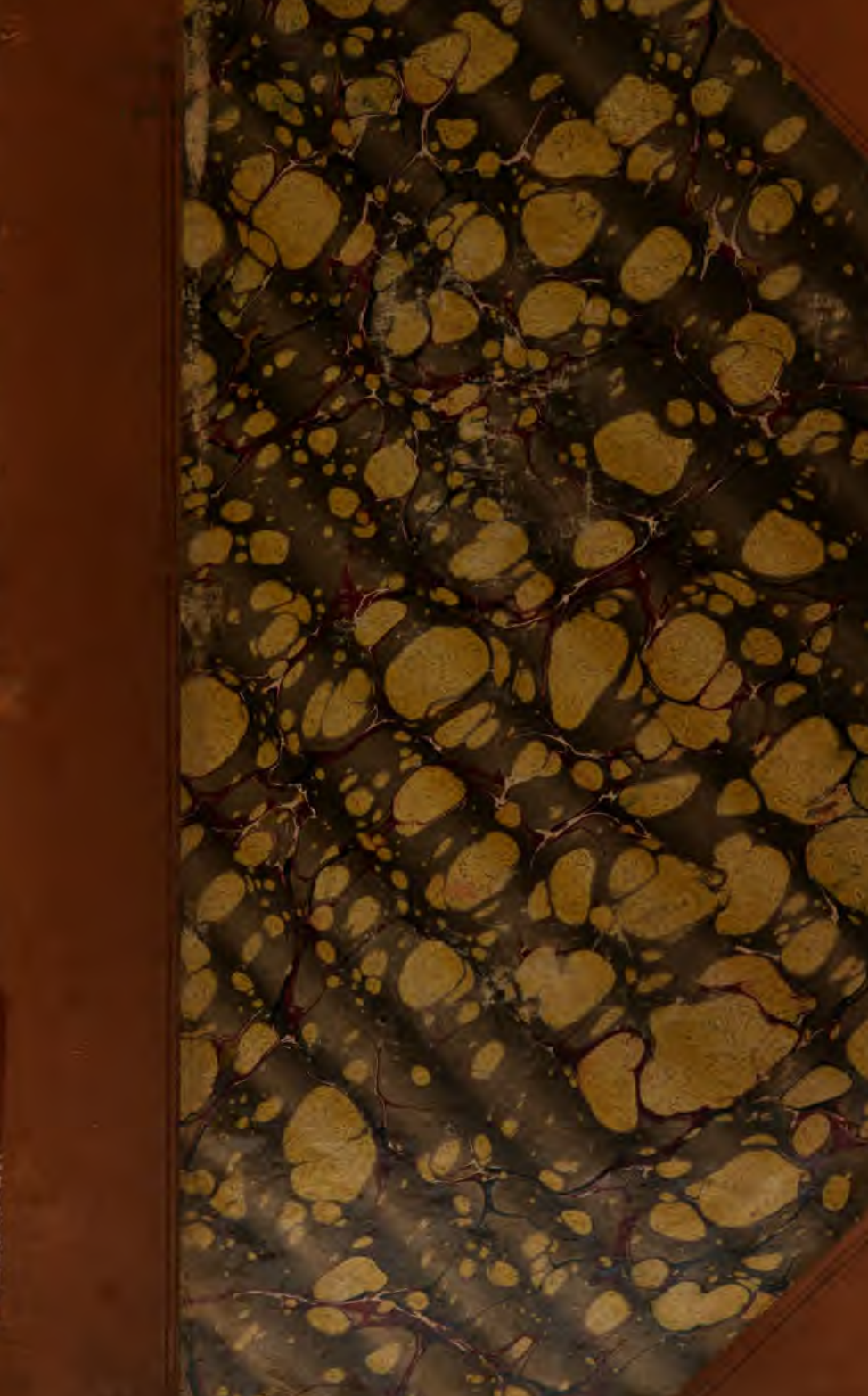
Google is proud to partner with libraries to digitize public domain materials and make them widely accessible. Public domain books belong to the public and we are merely their custodians. Nevertheless, this work is expensive, so in order to keep providing this resource, we have taken steps to prevent abuse by commercial parties, including placing technical restrictions on automated querying.

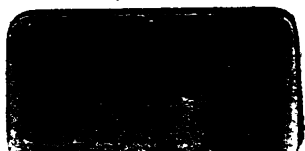
We also ask that you:

- + *Make non-commercial use of the files* We designed Google Book Search for use by individuals, and we request that you use these files for personal, non-commercial purposes.
- + *Refrain from automated querying* Do not send automated queries of any sort to Google's system: If you are conducting research on machine translation, optical character recognition or other areas where access to a large amount of text is helpful, please contact us. We encourage the use of public domain materials for these purposes and may be able to help.
- + *Maintain attribution* The Google "watermark" you see on each file is essential for informing people about this project and helping them find additional materials through Google Book Search. Please do not remove it.
- + *Keep it legal* Whatever your use, remember that you are responsible for ensuring that what you are doing is legal. Do not assume that just because we believe a book is in the public domain for users in the United States, that the work is also in the public domain for users in other countries. Whether a book is still in copyright varies from country to country, and we can't offer guidance on whether any specific use of any specific book is allowed. Please do not assume that a book's appearance in Google Book Search means it can be used in any manner anywhere in the world. Copyright infringement liability can be quite severe.

About Google Book Search

Google's mission is to organize the world's information and to make it universally accessible and useful. Google Book Search helps readers discover the world's books while helping authors and publishers reach new audiences. You can search through the full text of this book on the web at <http://books.google.com/>





2nd
English
P. 100

The Law Magazine.

OR

QUARTERLY REVIEW

OF

Jurisprudence.

FEBRUARY—MAY, 1852.

VOL. XVI. NEW SERIES;

VOL. XLVII. OF THE OLD SERIES.

LONDON:

BUTTERWORTHS, 7, FLEET STREET,

Law Booksellers and Publishers;

EDINBURGH: T. & T. CLARK, AND BELL & BRADFUTE.

DUBLIN: HODGES & SMITH.

1852.

59,139
LELAND STANFORD, JR., UNIVERSITY
LIBRARY OF THE
LAW DEPARTMENT.

LONDON :
PRINTED BY G. BOWORTH AND SONS,
BELL YARD, TEMPLE BAR.

CONTENTS.

	Page
ART. I.—REFORM OF THE REPRESENTATION BY COUNTY CONSTITUENCIES ONLY . . .	1
II.—TREATIES AND CONVENTIONS BETWEEN GREAT BRITAIN AND FOREIGN POWERS	11
III.—THE SCOTCH COUNTY COURTS—SALA- RIES, JURISDICTION AND DUTIES OF THE JUDGES	17
IV.—THE HISTORICAL AND ACTUAL RELA- TION BETWEEN COUNSEL, ATTORNEY AND CLIENT	25
V.—IS PARTNERSHIP EN COMMANDITE RE- COGNIZED AND PERMITTED BY THE PRESENT LAW OF ENGLAND? . . .	50
VI.—FORMS OF INDICTMENTS UNDER LORD CAMPBELL'S ACT—14 & 15 VICT. c. 100 .	66
VII.—THE SCOTCH BAR AND THE LEGAL COMPETENCE OF THE HOUSE OF LORDS	72
VIII.—FUSION OF LAW AND EQUITY—PRO- POSED EQUITY COUNTY COURTS . .	82
IX.—SIR JOHN PATTESON	90

NOTES OF LEADING CASES :

EQUITY.

Hawkins v. Gathercole, 1 Sim. (N. S.) 63; *Harcourt v. Seymour*, *Séymour v. Lord Vernon*, 20 Law J. (Chanc.) 606; *In re the Direct Exeter, Plymouth and Devonport Railway Company*, Ex parte Besly, 3 M'N. & G. 287; 15 Jur. 523; *Kemp v. Sober*, 20 Law J. (Chanc.) 602 105—114

COMMON LAW.

Steiner v. Heald (in error), 20 L. J. (Exch.) 410; *Sellers v. Dickenson*, Ib. 417; *Attorney-General v. Bradbury*, 21 Law J. (Exch.) 12; *Macdougall v. Paterson*, 15 Jur. 1108; *Hewitt v. Paterson*, 20 Law J. (Exch.) 337; *Bridges v. Hawkesworth*, 15 Jur. 1079; *Reg. v. Preston*, 21 Law J. (M. C.) 41 114—122

SHORT NOTES OF NEW BOOKS :

Deane's Act for Amendment of Law of Wills, 123; *Strange's Common Lodging Houses Act*, 123; *Lewis's Questions affecting Lawyers*, 123; *Ragged School Union Magazine*, 125; *Report of Liverpool Domestic Mission*, 125; *Spence's Patentable Invention and Scientific Evidence*, 125; *Reports of Cases in Scotland*, 126; *Woolrych's Legal Time*, 126; *The Westminster Review*, 126; *Stephen's Royal Pardon vindicated*, 127.

EVENTS OF THE QUARTER 128

CORRESPONDENCE 133

LEGAL AND PARLIAMENTARY PAPERS 135

LIST OF NEW PUBLICATIONS 137

CONTENTS.

	Page
ART. I.—COUNTY COURTS EXTENSION	139
II.—THE SCOTCH COUNTY COURTS—RE- FORM IN THEIR PROCEDURE . . .	145
III.—FOSS's JUDGES OF ENGLAND	156
IV.—CRIMINAL CHILDREN	162
V.—DISTRICT COURTS OF BANKRUPTCY .	176
VI.—VENDORS AND PURCHASERS OF REAL ESTATE	184
VII.—OUR LAWS OF PROGRESS	187
VIII.—THE CHANCERY COMMISSION	206
IX.—EMINENT MEMBERS OF THE BAR . .	229
X.—FORSYTH ON JURIES	242
XI.—STRICTURES ON JUDGES	248
XII.—LAW OF PARTNERSHIP	255

NOTES OF LEADING CASES :

EQUITY.

Blenkinsop v. Blenkinsop, 12 Beav. 568; Bligh v. Tredgett, 15 Jurist, 1101; Lock v. Thomas, 15 Jurist, 162	267—272
--	---------

COMMON LAW.

Bellamy v. Majoribanks, 21 Law J. (Exch.) 70; Hallett v. Dowdall, 21 Law J. (Q. B.) 98, in Error; Clack v. Sainsbury, 21 Law J. (C. P.) 41; Nixon v. Phillips, 21 Law J. (Exch.) 88	273—282
---	---------

SHORT NOTES OF NEW BOOKS :

Nichols's Literary Remains of John Stockdale Hardy, 283; Macrae's Insolvency, 283; Journal of Psychological Medicine, 283; Irwin's Report of Stewart v. Crommelin, 283; W. Charnock's Suitors' County Court Guide, 283; Pashley's Pauperism and Poor Laws, 284; Stewart's Suggestions on Law Reform, 284; Coode on Legislative Expression, 284.

EVENTS OF THE QUARTER	285
LEGAL DOCUMENTS	290
LIST OF NEW PUBLICATIONS	291
INDEX	293

THE
LAW MAGAZINE;
OR,
QUARTERLY REVIEW
OF
Jurisprudence.

ART. I.—REFORM OF THE REPRESENTATION BY
COUNTY CONSTITUENCIES ONLY.

Three Letters on Direct Representation by the People. By M. Rittinghausen, a Member of the National Assembly at Frankfort. Eff. Wilson, London. 1851.

Histoire des Origines du Gouvernement Représentative en Europe. Par M. Guizot. Paris. 1851.

LEGISLATIVE representation is about to undergo, it is said, one of those commotions which every now and then disturb rather than change the constitution of Parliament. Without entering into the question how far any such enterprise is especially needed, it may be taken for granted that the initiative in this movement is purely governmental, and nowise the result of popular demand. Perhaps this is a circumstance tending to favour the deliberation which ought to accompany any such undertaking; inasmuch as times of political agitation are peculiarly unfit for political reflection. That which is thoughtful in politics, and sober in patriotism, gains no hearing amidst the uplifting of the *vox populi*. And it is probably on this account that our government proposes further reform in our representative system just when few people ask for it. Availing ourselves of this opportune calm, to put forth a few thoughts of our own on the subject, let us glance very briefly at the principles on which our representative legislation should be based.

We are indebted to the author of the first of the works above-named for an useful illustration of the excesses of democratic theory in practice. This gentlemen would have no re-

presentation at all; according to him the people are not to elect; they are to enact. Legislation is to be direct. The magistrates in each section (how inspired M. Rittinghausen does not vouchsafe to say) are to propound questions which the people are to answer, in this fashion:—"Will you have a railway from Lyons to Strasbourg?" *People.* "Yes." *Magistrate.* "Shall the State pay for it?" *People.* "Yes." *Magistrate.* "Shall the money be raised by taxes, or borrowed from bankers?" *People.* "Borrow it." In the first place the author seems to ignore the fact that, as the magistrate is to select the questions, the initiative of all measures and legislation rests with him, a power infinitely opposed to popular government; also, that, by dispensing with a parliament or convocation of representatives, it equally deprives itself of deliberative councils, and the benefit of conference and discussion by the highest intelligence, whereby legislation may be devised and framed with the greatest wisdom for popular interests.

The great evil in our present system exists in the many abuses which annul or prevent the exercise of electoral judgment, substituting for it all kinds of external influences. That the constituencies should think; and vote accordingly, is the desideratum—that they do not think, and that they vote without judgment, is the practice at least with a large body, so large that the electoral influences operate on fear, or pecuniary interest, or local bias; and elections themselves are appeals to passions rather than to opinions. It is bootless to argue the questions raised by Guizot and de Tocqueville as to the possible "tyranny of a majority;" and which, if well analyzed, will be found to mean no more than the inherent imperfection of our nature, "debased by slavery, and corrupt by power." It is bootless to discuss this "tyranny of the majority;" moreover, inasmuch as we have no operative majority at all. The majority of our electors are tools, and not electors; and it is a minority, and a small one, that actually returns the representatives. Now this is a fact which no one doubts who is really aware of the means whereby elections are practically carried in nine-tenths of our boroughs, and most of our counties. The influence, in a great majority of cases a money one, is exercised with little regard to the interests of the nation, but with regard especially to the particular views of the men who happen to be in possession of the means of purchasing or suborning the requisite number of voters to turn the scale. The recent disclosures at St. Albans have sufficiently proved this.

A young gentleman lately, being desirous of the distinction of

a seat in parliament, applied to his attorney, who made due inquiries for an accessible borough, and found one without much difficulty which was smarting under the unprincipled conduct of one of its last members, who had omitted to pay his election bills and bribes. The condition of the adoption of the new candidate was, that he should not only settle the expenses of his own election, but those also of his predecessor. This was actually done, and the aspirant duly seated, although this patriotic constituency had never heard of his existence before. In another immaculate borough, because no one could be found who would "bleed" sufficiently, in order to keep the seat open and ready for a higher bidder, they literally returned a young grocer, who was duly bought out by the first ready-money man who wanted a seat on a pinch. These cases probably present no greater venality than actually exists at the present time in scores of other cases. They would return a kangaroo if he could but pay. It is difficult to say how many seats are determined and members returned exclusively by the votes of what are technically termed the three o'clock men, whose decision which way to vote is usually deferred till a tolerably advanced hour on the election day. These amiable people are usually not very numerous, say forty on the average, but quite enough to turn the scale, and to induce any man, bent on the purchase of a seat, to present himself where his gold will thus *tell*. The result of this is, that perchance 1000 of the most unreflecting and unprincipled men of the lowest order, and having neither property, character or intelligence, actually return some twenty-five members to parliament; one-half the number frequently deciding the fate of great national questions. Let us add to this the still more unascertainable number of "gentlemen," at least by courtesy, who from various circumstances possess sufficient influence to determine the election in the places where their property is situated. These amount at the very least to thirty persons, who return as many members to parliament of their own will and pleasure. In other places, not equally "close," the actual and effective power of returning the members is vested, not in one, but certainly in some half-dozen individuals, who, in at least fifty other places, return some seventy or eighty members. Thus we have a handful of men, say 1500 at the outside, returning about 130 members to parliament; a body who, in the present balanced state of parties, determine the whole course of legislation! We have given here but approximative numbers, but a thorough scrutiny into the actual machinery and motive power of elections would, we are convinced, develop a far grosser case.

Were the immense power thus placed in the hands of a few men entrusted only to those who were eminent for the amount of their property and intelligence, or public virtue, many people would deem the sacrifice of popular representation it involved, well compensated by the security it afforded of wise and conservative legislation. But the case is exactly the reverse; and every conservative and patriotic impulse, as well as every just, popular or rational principle, is necessarily opposed to so dire an evil. In fact the powerlessness of great principles, the dearth of elevated and far-sighted views, the poverty of opinion, the vapidty of debate, and the halting and botched character of the acts of the present parliament, significantly indicate a predominating body not perhaps strong enough to compass much positive mischief, but amply sufficient to baffle patriotism and lower the whole tone of legislation. The old cry in favour of a Reform in Parliament was, that the landed interest or the aristocracy had undue power. Nothing half so respectable wields it now. It is the power of money, used often in its most brutalising appliances. The revelations at St. Albans are a national reproach, to which there is nothing parallel in Europe for moral debasement. We are for giving to the English people that voice and part in the election of their representatives which the law of the land accords them. *Fiat electio ritè et liberè*, we apprehend to be a safe as well as a constitutional requirement. But it is neither the one nor the other to say, that the constituent people are not qualified to elect wisely. The highest degree of discretion and wisdom are indeed required to understand on each occasion what is best as a measure of government, and some courage and virtue, perhaps, to uphold it when understood. But it requires none of these qualities beyond those possessed by a people in a state of tolerable civilization to know, who are the men among them in best esteem for worth and wisdom. As it is, for the most part, the electors have no power, and the elected no wisdom. The people could not choose worse legislators for themselves than money chooses for them. We assume, of course, that the constituency be limited to that portion of the people, who, by some sufficient test, present some guarantee of intelligence and prudence. Into the much-mooted question of electoral qualification, we do not propose to enter, but to confine ourselves to the more jurisprudential consideration of the organization of constituencies. We believe this to have a great influence on the above-named evils and the means of removing them.

It is a notorious fact, that the great money abuses exist in boroughs, and especially in small constituencies. In fact the

smaller the constituency, the greater the venality and corruption. The very fact of the fewness of the electors obviously facilitates every foul influence over their votes; the power of purchasing or of intimidating is augmented in inverse proportion to the field for its exercise and the number of its victims. Appeals to debauchery are also more effective in proportion to the snugness and smallness of the coteries in which it exists and luxuriates. All the local influences, interests, prejudices, favouritisms and feuds, rankle in tenfold force, where the sphere of their operation is concentrated.

We desire, therefore, a riddance of small constituencies and local passions. We are satisfied that with them no elections can be pure tests of political opinion.

If our constituencies are to be enlarged, it must be on a scale which shall approach to a uniform proportion between electors and members. The Reform Act was fought for on the ground that the old system sinned grievously in this respect: but having knocked down the antiquated fabric, it built up a ruin out of the débris almost as hideously disproportioned, and far more incongruous, than its predecessor; anything more outrageously at war with the very principle and purpose of its creation, is inconceivable. It was so fashioned and framed on the basis of no one of the great estates—king, lords, people, or press—neither did it represent any one; much less did it possess even the solitary recommendation of being consistent with any single principle of representation. Did it represent intelligence and virtue, and give the suffrage to men above the temptations of bribe or beer? Let St. Albans and Sudbury tell. Did it give a property qualification? Let the *non-enfranchised* fundholders and shipowners, and the *enfranchised* faggot voters, and forty shilling freeholders, answer! Did it apportion the franchise numerically? On the contrary—as we have just said and propose now to show—in wild defiance of any kind of proportion between voters and members. The result is that we are, after twenty years, at a dead lock; the parliament coherent with nothing, represents no opinion or party in the country, and is unable even to form or maintain a government having any definite line of policy!

This absence of political principles in legislation is the natural result of non-political elections. There is, however, this marked distinction between the larger and smaller constituencies, and especially between counties and boroughs, namely, that the political opinions of the former are far more pronounced, and the result of an election more capable of being predicated than in the latter. There are but few counties in

6 *Reform of Representation by County Constituencies.*

which the preponderance of political opinion is not already so well known as to make the returns from them a matter almost of certainty. According to the present system, let us compare the relative electoral power conferred on the smallest borough and largest county constituencies, and then let us, if we can, divine the rationale of the distinction.

Here are twelve boroughs, their population and representatives:

Boroughs.	Electors.	Members.	Boroughs.	Electors.	Members.
Andover ..	243	.. 2	Reigate ..	198	.. 1
Arundel ..	221	.. 1	Thetford ..	214	.. 2
Ashburton ..	261	.. 1	Totness ..	378	.. 2
Buckingham ..	393	.. 2	Wycombe ..	346	.. 2
Chipenham ..	307	.. 2			
Harwich ..	294	.. 2		<u>3459</u>	<u>27</u>
Knaresboro' ..	228	.. 2			
Marlow ..	376	.. 2			

Thus in these twelve boroughs collectively, every 128 electors return a representative.

Here are twelve other boroughs:

Boroughs.	Electors.	Members.	Boroughs.	Electors.	Members.
Birmingham	7,535	.. 2	Salford ..	2,602	.. 1
Cheltenham	2,345	.. 1	Sheffield ..	4,995	.. 2
Finsbury ..	15,821	.. 2	Swansea ..	1,563	.. 1
Greenwich ..	5,573	.. 2	Tower Hamlets	19,361	.. 2
Lambeth ..	13,885	.. 2			
Leeds ..	6,015	.. 2		<u>109,343</u>	<u>21</u>
Manchester ..	12,836	.. 2			
Marylebone ..	16,812	.. 2			

In these boroughs it takes 5206 electors to return one member.

Here are twelve counties:

Counties.	Electors. ¹	Members.	Counties.	Electors.	Members.
Chester ..	10,235	.. 4	Stafford ..	11,863	.. 4
Devon ..	12,822	.. 4	Surrey ..	6,062	.. 4
Gloucester ..	12,958	.. 4	Warwick ..	6,280	.. 4
Kent ..	13,703	.. 4	York, West Ri.	18,056	.. 2
Lancaster ..	16,632	.. 4			
Middlesex ..	6,939	.. 2		<u>143,767</u>	<u>44</u>
Norfolk ..	11,437	.. 4			
Somerset ..	16,780	.. 4			

In these counties it takes 3267 electors to return a member.

¹ We have taken the original registration in 1832, not having the later list at hand. The calculation is therefore *below* the truth.

To recapitulate: in the first batch of boroughs, viz. Andover, &c., each voter has forty times more electoral power, and has forty times more influence over legislation, than an elector in the other batch of boroughs, viz. Birmingham, &c., and he has more than twenty-five times as much as each voter in the above-named counties. To say that neither in intelligence, discretion, or independence, is the favoured voter who has forty times the electoral influence of the voter in the larger boroughs—their superior—is to say what is far below the fact.

How is this to be remedied? The most simple plan is obviously to apportion the representatives to the represented. Supposing that some kind of uniform qualification for the suffrage were established, the proportion of electors to population would be also uniform, or nearly so, throughout the kingdom. The census returns every ten years would therefore afford a fair and equable standard for the number of representatives in each locality, and a numerical representation would be established, free from the gross absurdity and anomaly of giving one voter forty times as much representation as another. A numerically apportioned representation would, in great measure, get rid of the vast abuses which beset the present small boroughs—those nests of corruption and foul influences—for such places would be necessarily joined to others, in order to comprise the population equivalent to a representative. But the result of this would be, that a great distance would intervene between the towns in the same electoral district, of which the inconvenience would be manifestly great. It is not easy—perhaps not possible—to remove this difficulty, and also to secure the benefit of a justly proportioned representation of borough voters. This difficulty has suggested to us the question why boroughs should be retained at all, and we shall probably startle some of our readers by suggesting their entire abolition, and the substitution of A UNIFORM COUNTY FRANCHISE. Let us examine the validity of objections in the form of a dialogue on the subject:—

Con. What! abolish the ancient institution of boroughs! How are their local rights to be advocated and protected, if they lose their members?

Pro. Their members do not protect them as it is. Did you ever hear of Sir Robert Peel haranguing parliament on the liberties of Tamworth, or Sir Edward Kerrison advocating the rights of Eye? It is all moonshine about the advocacy of local rights. How, pray, did the long list of towns, which were enfranchised in 1832, get on before they had any members? Why much better than the old boroughs, who had enjoyed this precious protection all along, for it was owing to their

growth and prosperity that the new ones got members at all, and very little good they have got by them.

Con. But there are all kinds of local objects which boroughs wish to have—

Pro. Jobbed? No doubt of it; and the sooner you are deprived of the power of doing it the better.

Con. But there are also really good and useful measures which belong to towns, and require especial support, such as railways, docks, &c.

Pro. If so, the county members, who have been supported by such towns, will have quite sufficient motive, both on public and private grounds, to further such measures.

Con. But look at the loss of their dignity and immemorial privileges!

Pro. Dignity! Their franchise has added vastly to the dignity of St. Albans and Sudbury, for example.

Con. All places are not like those.

Pro. They are not, perhaps, so notoriously corrupt; but there are many nearly as bad and where at any rate any other kind of influence is stronger than the pure and unbiased judgment of the voter. The immemorial privilege is a privilege of periodical tumult, envy, malice, hatred, and all uncharitableness, which seldom entirely subsides before another election evokes it all again, and in its turn leaves another legacy of feud and discord in its train. Don't talk about an "immemorial privilege," it is much more like a periodical curse; and many a quiet man has lived to rue the day when this precious privilege, as you call it, descended like an apple of strife on his neighbourhood.

Con. But would you therefore disfranchise all borough voters?

Pro. I would give them all county votes on the contrary.

Con. But this is quite a radical change.

Pro. You may rely on it that the Radicals will think it far too Conservative. Dropping *noms de guerre*, I submit that the only rational way of looking at it is with regard to its practical merits.

Con. Aye, it isn't practical.

Pro. It happens, on the contrary, to be beyond comparison more practical, and practicable to boot, than the present incongruous system of splitting up half-a-dozen different kinds of franchise and all kinds of proportion between members and voters in at least 100 places. Instead of this, you will have but one kind of franchise.

Con. How would you manage with very large counties?

Por. We would divide them as at present; the larger counties into four or five divisions.

Con. And have nothing but county members and county electors?

Pro. Just so.

Con. The boroughs will feel greatly aggrieved at being thus excluded from distinct representation, a privilege originally conferred on their ancestors, and identified with the liberties of the land.

Pro. If you had said that their distinct representation was identified with the payment of taxes, and originally resisted as a great grievance by their ancestors, you would have been much nearer the truth. Until 1264 the boroughs sent no members to parliament, and they then owed the very questionable honour to their money bags, which could not be got at without. And so fully was this felt and acted on, that in 1382 Richard II. passed an act to compel attendance; and it refers to the customary punishments for not attending. This appears to have been equally ineffectual; for punishments failing, in 1543 we find bribes tried, and members paid "fees and wages" for their parliamentary services.

We propose not only to give exclusive county representation, but to reduce the number of members, which are inconveniently large for the purpose of business.

It is thus to the extension of electoral districts and increase of constituencies that we look for the remedy of a system of corruption, whose stronghold is in the concentration of the one and the smallness of the other.

We propose to assign a representative to every 40,000 of the *population*, thus reducing the numbers in each county to such a standard as shall be at once equable and uniform, and be equally applicable and workable under any modification of the *qualification* for the suffrage; a point on which, as we have already said, we do not intend to enter.

The number of members in each county would, according to the last census, stand as follows in England and Wales:—

10 *Reform of Representation by County Constituencies.*

Counties.	Present Members.	Proposed Members.	Counties.	Present Members.	Proposed Members.
Bedford ..	3	3	Northumberland ..	11	7
Berks ..	8	5	Nottingham ..	9	7
Bucks ..	11	4	Oxford ..	9	4
Cambridge ..	7	5	Rutland ..	2	1
Chester ..	10	11	Salop ..	12	6
Cornwall ..	13	9	Somerset ..	15	11
Cumberland ..	9	5	Southampton ..	16	10
Derby ..	6	6	Stafford ..	17	26
Devon ..	22	14	Suffolk ..	9	8
Dorset ..	14	4	Surrey ..	11	17
Durham ..	10	10	Sussex ..	18	8
Essex ..	10	8	Warwick ..	10	12
Gloucester ..	13	10	Westmoreland ..	3	1
Hereford ..	7	2	Wilts ..	18	6
Hertford ..	7	4	Worcester ..	13	6
Hunts ..	5	2	York, East Riding ..	8	6
Kent ..	18	15	— North Riding ..	11	5
Lancaster ..	26	52	— West Riding ..	18	32
Leicester ..	6	6	Wales, North ..	12	10
Lincoln ..	13	10	— South ..	14	15
Middlesex ..	14	47			
Norfolk ..	12	11			
Northampton ..	8	5	Total ..	488	446

We thus propose a reduction of forty-two members in England and Wales alone, proportioned according to the population of the counties, and also very nearly in proportion to their property and importance.

Wherever there are five members we propose two divisions; and above ten, three; above twenty, four divisions of counties.

It may be expedient to give to each Welsh county its separate member or members.

It may be objected, that it will invest the manufacturing interest with too much influence to give Lancashire an increase of twenty-six members. It is essential to keep to the numerical proportion. Moreover, Manchester would elect but five out of the number, the remainder being scattered over the county. London, which is non-manufacturing, receives moreover an accession more than equal to that of Lancashire.

Elections thus conducted will be appeals to the judgment of the country. In addition to the extreme simplicity of this scheme, it preserves the old county boundaries.

S.

ART. II.—TREATIES AND CONVENTIONS BETWEEN GREAT BRITAIN AND FOREIGN POWERS.

A Complete Collection of the Treaties and Conventions and reciprocal Regulations at present subsisting between Great Britain and Foreign Powers, and of the Laws, Decrees and Orders in Council concerning the same, so far as they relate to Commerce and Navigation, Slave Trade, Post Office Communications, Copyright, &c., and to the Privileges and Interests of the Subjects of the high contracting Parties; compiled from authentic Documents by Lewis Hertslet, Esq., Librarian and Keeper of the Papers, Foreign Office. 8 Vols. 8vo. London: H. Butterworth & Son, 7, Fleet Street. 1851.

IF a Chinese statesman could be made to comprehend that Great Britain had actually in force at this moment treaties, conventions and engagements of amity and commerce with upwards of 140 different states or people, besides upwards of fifty more between her East India Company and so many other states, and were further told that we sent annually to these countries between sixty and seventy millions of pounds sterling worth of goods, the produce and manufactures of Great Britain and Ireland, he would probably become profoundly impressed with a conviction of the strength and greatness and influence of the British name. "This wonderful state of things must needs," he would say, "attract the attention and engage the studies of all who claim to belong to the educated classes of this nation, so much interwoven in its interests and relations with foreign countries; to that their national pride, and the gratification arising from contemplating such diverse and widespread proofs of their grandeur, must irresistibly impel every one who has it in his power; and doubtless their press has long ago fully elucidated the whole subject, and rendered every detail of it generally and cheaply accessible." What would be his overwhelming surprise to be confidently assured, that with no one subject is it less common to find educated Englishmen not well, not even moderately or tolerably, but even in any degree conversant; that of our great statesmen but very few at a time—but two or three in a generation—have been considered to be well acquainted with our foreign relations; that no history of our alliances, no treatise on the principles or objects of our commercial treaties, are in existence; that down to last year we did not possess even a collection into a single work of our treaties,

conventions, agreements and engagements; but that any of these, when wanted for purposes of history or politics, or literature or instruction, or commerce, could only be found after long search through a mass of parliamentary papers and blue books, Rapin's folios and Carte's quartos. In a shape convenient for use and reference they were not to be had. The personage we have imagined might well be puzzled to account for such a phenomenon; the reflection arising in his mind would perhaps bear some analogy to that contained in the *naïve* exclamation of George II., speaking with reference to the first Pitt,—“Certainly the English are a strange people; they insist upon forcing on me as foreign minister a man who has never read Wicquefort.” Yet, in fact, so pinching has been the dearth of information on such subjects, that extremely few persons are now to be met with competent to state the particulars of the Peace of Paris, 1763, which, giving up so many of that great minister's conquests, established us in the possession of the grandest of them, and the most magnificent, and perhaps, all things considered, the most important of our remaining colonies. How many generations of our country gentlemen, rosy with their favourite beverage, but with a life-long unconsciousness of any idea touching the Methuen Treaty, have since its conclusion been gathered to their fathers—those very ancestors who clamoured furiously against Sir Robert Walpole for poisoning them with the port wine first introduced into use under its stipulations. In the sense of separation from the study of and interest in our foreign alliances and intercourse, we may still almost serve to tag the end of a poet's description, figuring as

Et penitus toto divisos orbe Britannos.

And up to this time there has been no help for it. Take an average youth on his leaving one of the great English grammar schools—those hotbeds of obsolete letters, where the bulk of our public men and official functionaries, the officers of the military, naval and diplomatical services, and a large proportion of the leading merchants are bred, receiving the best education of the kind that the world can supply—and you will find he not improbably remembers something of the treaty with Cassivelaunus, with which Cæsar closed his first campaign in Britain, and can give a minute account of the Roman forms and ceremonies of declaring war and concluding peace; but as to the present state of the relations of Great Britain with Rome, the difference in modern diplomacy between a convention and a treaty, or the definition of a protocol, his mind is a blank. The prevailing ignorance and *insouciance*, of good society with regard to such

subjects has long, we believe, excited the wonder and sometimes the scorn of foreigners; some of our late visitors, especially, if we are not misinformed, the Americans, were much struck and diverted with it. It is, therefore, with a lively satisfaction we announce to the public they will find in Mr. Hertslet's elaborate and carefully compiled work a complete repertory of every description of information (with one small exception, presently to be noticed) that can be required for the study of the vast and noble and truly national subject of the British relations with foreign powers. The text of all our subsisting treaties, from that with Tripoli, A.D. 1660, which appears to be earliest of them—a singular practical comment, by-the-bye, on Sir E. Coke's declaration of law, that infidels are *perpetui inimici*—down to this time, may here be read, together with all the statutes, orders in council, conventions and engagements enforcing them; with the regulations and statutes respecting marriages of British subjects abroad, British passenger vessels, British seamen, fisheries, light-tolls, quarantine, colonial trade, and, in a word, all that relates to the condition, rights and privileges of British subjects navigating foreign seas, or travelling or settled in foreign states, may be learnt in these most valuable, though, as might be expected, somewhat bulky volumes.

One point of the first importance to be inquired after as to such a work is its authority. Now these volumes have actually been prepared in the Foreign Office, being printed from the original documents there deposited, and printed in no book-making spirit, but with great care and deliberation, the first volume having appeared about ten years ago, for the use of her majesty's government and its officers abroad; and they are accordingly placed, by its authority and under its orders, in the hands of every British ambassador and minister at foreign courts, of every consul and vice-consul, of every captain of a British ship of war on foreign service, and of every governor of a British colony and dependency. Therefore it is impossible to mention a publication that ever came before the world with a higher sanction and guarantee than this for its fidelity, accuracy and completeness. It is, besides, printed with admirable correctness, in an excellent type; and the editor's indexes furnish a very full and ready means of obtaining a reference to any given subject contained in it. We have intimated an idea that some exception must be made to the completeness of the information conveyed; but we do not mean for a moment to say that the work is not complete *in itself*, or does not contain all that its title-page—for there is no preface or other statement of the views or objects with which it has been compiled—pro-

fesses to contain; indeed we have said the contrary; but let us observe, that to satisfy an earnest inquirer, and the wants of merchants and others practically engaged in foreign trade, or living in foreign countries, there is still room for a work, founded on or referring to this, which should explain and illustrate a variety of legal and otherwise technical terms, necessarily of perpetual occurrence in it, as well as state the decisions in our courts which have construed in parts several of the statutes cited, or generally have borne on the questions treated. Thus, with reference to the highly important and delicate question of marriage in foreign parts, where one or both of the parties are British subjects, it is hardly sufficient for all purposes to set out the statute "for facilitating the Marriage of British Subjects resident in Foreign Countries,"¹—which empowers each of our consuls, vice-consuls and consular agents, being duly authorized by the secretary of state, to solemnize or allow to be solemnized by any other person in his presence, at the British consulate, under certain forms and restrictions, and legalizes all such, marriages prospectively and all others retrospectively which have been had and made under certain specified conditions,—without also stating the substance of certain cases in the House of Lords, the Court of Exchequer and the Consistory Court,² from which it appears that before that enactment a marriage between British subjects, or where one of the parties was a British subject, could not be made abroad so as to be valid, although celebrated according to the rites of the United Church of England and Ireland, unless it took place in the presence of a priest in orders of that Church, and saving the case of a British soldier married within the British lines by a chaplain or officer, or other person officiating under the orders of the commanding officer of a British army serving abroad. A succinct but explanatory statement of the facts and the judgments in the cases above cited would be of much assistance to numbers of persons who, among the vast body of English now resident in foreign countries, may have married in some of the modes declared thereby to have been illegal and invalid, for guiding them to the meaning, as applicable or not to their own cases, of the words of the 20th clause of the statute, and whether their's fell within "the many marriages (which it declares) may have been entered into abroad by British subjects under circumstances which *may* occasion doubts as to the validity of such marriages," and whether they were or were not confirmed by the enacting part of

¹ 12 & 13 Vict. c. 68.

² *Reg. v. Millis*, 10 C. & F. 534; *Catherwood v. Caslon*, 13 M. & W. 261; *Catterall v. Catterall*, 1 Roberts, Ecc. Rep. 580.

the clause. But, as before observed, this kind of deficiency is no flaw in the work, with the plan of which such annotations would have been incompatible ; indeed looking to the quarter from whence it proceeds, everything in the nature of comment, discussion or exposition we cannot but say was probably much better and more wisely left to be executed by some one else, who may hereafter undertake to mould the materials here presented into a complete treatise in a legal form. In the meantime the work as it stands ought assuredly to find a place in every gentleman's library as a monument of the country's greatness, as a repository of documents essential to its history, where may be traced, for instance, the rise of the East India Company, from its first appearance in the horizon no bigger than a man's hand until now that it "flames in the forehead of the morning sky," or the progress of the efforts of England for the suppression of the Slave Trade as demonstrated by and in many scores of treaties and conventions, or the general advancement of civilization and the intercourse of amity and peace as manifested in the massive and elaborate accumulation of our postage and copyright arrangements with other countries. Some of the state papers of foreign potentates will be found to repay even an indolent curiosity as choice specimens of grandiloquence and verbosity, particularly a firman of the king of Persia, A.D. 1801, at vol. viii. p. 659. Of a graver character are the documents and public papers relating to China, including various proclamations of the Chinese government and the ordinances passed by the Superintendent of Trade and Legislative Council at Hong Kong—all of indispensable importance to persons concerned in the trade with the Five Ports. Every one remembers the importance of the text of the treaty of Utrecht to the discussions which took place in parliament some years ago respecting the Spanish marriages, and how that paper was so scarce and so little known that the Foreign Office was obliged to print and lay it on the table of the House of Commons. Now, considering what our national debt shows, and the legislature every year reminds us in the Mutiny Act, we have done and still do for the maintenance of the balance of power in Europe, it is quite disgraceful that a treaty so materially conducing to that ancient but not yet wholly obsolete British object should have been so recondite a matter in a country overflowed with oceans of print. Such things can now occur no more ; Mr. Hertslet's book must render as common in the libraries of our legislators the treaties, as are the statutes, of the realm ; and one result of that will no doubt be to diffuse an immense mass of information, and so qualify parliament for a much more vigilant and close and enlightened super-

intendence and direction of our foreign policy, and a much more effectual care of the interests of trade and foreign intercourse than it has ever hitherto been in a condition to assume. In fact the book would have been infinitely more manageable at home than abroad, because persons going out of this country do not usually carry with them or have sent to them the statutes at large; whereas in these days of passing laws one session with great deliberation and repealing them the next with great deliberation, the most grave errors might have been fallen upon by those who acted after Mr. Hertslet's work without knowing of the important alterations made by parliament subsequently, if it had not been for the care with which he warns the reader of the change. Thus in 1845 was passed "An Act for the Encouragement of British Shipping and Navigation," which we find in vol. vii. p. 654. Mr. Hertslet, however, hangs out the signal at the foot of the page denoting the repeal of this statute by 12 & 13 Vict. c. 29, passed four years later; but we must add that the last act also either repeals or alters the provisions of ten other statutes more or less relating to foreign trade, and therefore it is very properly inserted at length, vol. viii. p. 355.

One of the statutes considerably altered by the above is the act for registering British vessels, 8 & 9 Vict. c. 89. We shall mention a few cases which have been decided upon it and still hold good, being untouched by the later enactment, in the hope of circulating more widely the important principles decided in them. It has been decided¹ that a body politic or corporation domiciled in England is a British subject so as to be able to register vessels, although several members of it be foreigners and persons residing beyond the seas, and the later act² does not overturn this decision, as it only enacts that all natural born subjects of her Majesty, &c. shall be deemed to be duly qualified to be owners of British registered vessels, anything in the said act to the contrary in anywise notwithstanding, and as it contemplates corporations still being owners of British vessels; and therefore it would seem that in this respect the later act rather enlarges than circumscribes the operation of the former.

The Registration of British Vessels Act³ requires that the property of any ship or vessel, or any part thereof, being registered should be transferred by bill of sale, but this does not include a boat under fifteen tons burden, although it have been registered, for vessels under fifteen tons do not need to be regis-

¹ Reg. v. Arnaud, 9 Q. B. 806.

² 12 & 13 Vict. c. 29, s. 6, and see s. 19, declaration by officer of a corporation, owner of a vessel.

³ 8 & 9 Vict. c. 89, s. 34.

tered,¹ and it is only ships that must be registered that must also be transferred by bill of sale.²

Also equity will not permit a registry in fraud of the act to be set up, so as to vest colourably the property in A. and B., in whose names the ship is registered, but who in fact hold it as trustees for one or more foreigners; for no ship is deemed to be duly registered the whole property in which is not vested in a British subject.³

¹ 8 & 9 Vict. c. 88, s. 14.

² *Benyon v. Cresswell*, 18 L. J. (N. S.), Q. B. 1.

³ *King of the Two Sicilies v. Peninsular and Oriental Steam Packet Company*, 19 L. J. (N. S.) Chanc. 202.

J. G.

ART. III.—THE SCOTCH COUNTY COURTS—SALARIES, JURISDICTION AND DUTIES OF THE JUDGES.

AT a time when so much attention is directed to the new system of local jurisdiction in England, and so much interest felt with regard to its operation, it will not be unacceptable to give a short view of the nature and powers of the local courts in Scotland. In doing so, it is not the purpose of this article to make any contrast or comparison between the two systems, but simply to explain the present state of the latter.

The local judges in each county in Scotland are the sheriff and his substitutes. The sheriff is appointed by the crown, and the qualifications necessary for the office are, that he be a member of the Faculty of Advocates of at least three years standing, and that he shall have been at the time of his appointment in practice before, and in habitual attendance upon the Court of Session.¹

The sheriff has the power of appointing substitutes, one or more, according to the extent or the population of the county. When there is more than one sheriff-substitute in a county, each has a distinct district assigned to his charge, but his jurisdiction extends over the whole, and may, where necessary, be exercised throughout it, and beyond his own peculiar bounds. No one can be nominated a sheriff-substitute who is not either an advocate, or a writer to the signet, or a solicitor before the Supreme

¹ 1 & 2 Vict. c. 119, s. 2.

Court, or a procurator—that is a solicitor or attorney—before a Sheriff Court of at least three years standing. And of late years, it may be remarked, these judges have almost invariably been selected from the Faculty of Advocates or the Writers to the Signet, members of the College of Justice. Besides this, in order to render a commission by a sheriff to a substitute valid, a certificate must be granted by the president of the Court of Session and the Lord Justice Clerk (the presiding judges in the two divisions of the Supreme Court) that the person nominated is properly qualified to discharge the duties of the office.

The sheriff is appointed *ad vitam aut culpam*, and does not now require to reside for any specified time within his county; on the contrary, he must be in habitual attendance upon the Court of Session during its sitting; but he must hold a certain number of courts, four at least, at fixed periods, annually. The sheriffs-substitute might formerly be removed at the pleasure of the sheriff; but now, when once appointed, they cannot be removed from office without the consent in writing of the heads of both the divisions of the Supreme Court. They are rigidly bound to personal residence within the county, not being allowed to be absent from it for more than six weeks in the year, nor for more than a fortnight at one time without a written consent from the sheriff, who, in such a case, must either attend personally or appoint another qualified person to act in his stead.

The sheriffs-substitute, being constantly resident, are thus, in the strictest sense of the word, local judges, and, in the absence of the sheriff, are vested with his whole duties and powers; their judgments, however, except in one department of jurisdiction, afterwards to be mentioned, being in almost every instance subject to his review by appeal. In speaking therefore of the nature and extent of the jurisdiction of the Sheriff Courts, the term “sheriff” will be used as embracing both the sheriff principal and his substitutes.

The powers of sheriffs in Scotland are both ministerial and judicial. By different statutes various important duties of the former kind are imposed upon them; for instance, they summon and return jurors for the trial of causes in the Circuit or Assize Courts; they visit and report the state of the prisons and mad-houses within their bounds, and also inspect and annually report on the state of the various public registers of deeds in the county. Under the Reform Act they issue the writs of election, take charge of the registers of votes, and generally of the proceedings at each election. Another important duty devolved upon the sheriff, which is partly judicial as well as ministerial, is, what is termed in Scotland, striking the fiars. This is a formal pro-

ceeding, by which, through the intervention of a jury, the average price of grain of the preceding year's crop is annually declared, for the purpose of fixing the amount of such rents and other dues, such as the stipends of the clergy, as are payable either nominally in grain or at a rate corresponding to fiars, or average price of it during the year.

The judicial powers of the sheriff in civil matters are very extensive. It will be understood, however, that, in what is said on this subject, only a general view is given, as it would be impossible within the limits of a communication like the present to enter into anything like a full detail with regard to it.

The sheriffs then have the power of judging in all actions arising out of contract or quasi contract; in all questions affecting moveable or personal estate; in those of disputed possession, and of the exercise or use of heritable or real property, and in bankruptcy. And it will be understood that in all these instances their jurisdiction extends to matters of equity as well as of law—in Scotland there being in practice no distinction between the two. Thus they can decide in all questions as to sale, hire, loan, copartnery, and in disputes between landlord and tenant. And, it may be observed, in such cases they have power to order specific performance of obligations as well as payment, or to determine the amount of pecuniary compensation due. Actions of damages for injury to character, person or property come within their powers, and also actions for aliment at the instance of wives against their husbands, and those for the aliment of illegitimate children. In all these instances there is no limit to the sum or the value of the property subject to their jurisdiction, and in many instances questions affecting personal property to a very large amount are tried and disposed of in their courts. And not only so, but *all* causes, generally speaking, with the exceptions afterwards to be mentioned, in which the value in dispute does not exceed 25*l.*, must *originate* in the Sheriff Courts.¹ In virtue of their jurisdiction in possessory actions, the Sheriff Courts have the power of granting interdict or injunctions for stopping encroachments, or any act or proceeding in relation to property, personal or real, complained of as wrongful or illegal. They have the power of removing tenants from their lands at the instance of the landlord, and of entertaining actions by which possession of property is sought to be protected or restored.

¹ There are certain other local courts termed burgh courts, presided over by the magistrates, which in this and a good many other respects have similar jurisdiction with those of the sheriffs; but as it is only in a few large towns that they constitute tribunals of much importance, it has not been thought necessary to give any account of them here.

With regard to the exercise and use of real property, their jurisdiction extends to all questions of servitude and nuisance; to actions for the sequestration and sale of the effects of tenants for payment of their rents; and by certain old statutes they were empowered to decide in actions for "straightening marches," that is, for settling the boundaries of conterminous estates when it is wished to have a better adjustment of them, and in actions for division of survey lands—that is for the division and re-union of lands belonging to different proprietors and lying in alternate ridges or patches.

In bankruptcy again, although the first step takes place in the Supreme Court, the greater part of the subsequent procedure is before the sheriff. Thus, he presides at some of the meetings of creditors; he examines and judges of the qualification of creditors claiming to vote for the trustee or assignee on the estate; he confirms the election of the trustee; he reviews his judgments on the claims of creditors; the examination of the bankrupt takes place before him; he checks the final winding-up of the proceedings, and inquires into and determines the right of the trustee to exoneration and discharge from his office.

The procedure in what is termed "cessio bonorum" also takes place in the Sheriff Court—a remedy by which a debtor who is not entitled to sequestration under the bankrupt acts is protected against imprisonment by surrendering to his creditors all funds and other goods or property of which he may be possessed.

Further, the Sheriff Courts have an Admiralty jurisdiction, in virtue of which they have a power of deciding in maritime causes. This was conferred upon them by the act 1 Will. IV. c. 69; and they can now in consequence entertain and decide in all questions relating to charterparties, freights, salvages, bottomry, policies of insurance, and other such matters. And again, they have what is termed a commissary or consistorial jurisdiction, but this is of a very limited extent. The only causes of this kind which they have power to try are actions of adherence at the instance of a husband or wife, necessary as a foundation of an action of divorce on the ground of desertion in the Supreme Court in its consistorial character; competitions for the office of executor to deceased persons, and what is termed confirmation of testaments or settlements of moveable property.

But, perhaps, a better idea of the extent of the powers of the Sheriff Courts will be conveyed by stating generally the causes in which they have not jurisdiction, and which are competent only in the Court of Session—in all those already mentioned

their jurisdiction being cumulative or coequal in the first instance with that of the Supreme Court.

1. They have no power to entertain actions in which the title or right to land or other real property is concerned, except to the extent, as already stated, of granting interdict against encroachments or disposing of merely possessory questions, or actions or legal proceedings for attaching such property in payment or security of debt.

2. What are termed in Scotland declaratory actions, by which some right or obligation is sought to be declared on behalf of the party suing the action; and actions of reduction, by which formal writs or judgments are sought to be set aside on some legal ground, cannot be sued in them.

3. Actions the direct object of which is to fix and declare the personal civil status of individuals can be sued only in the Supreme Court. Such are actions of divorce and separation, and declaratory actions of marriage and legitimacy.

Such, generally speaking, are the only actions in which the jurisdiction of the Supreme Court is absolutely exclusive of that of the Sheriff Courts in Scotland.

The jurisdiction of the Sheriff Courts comprehends their *ordinary* and what is termed their small debt jurisdiction. These two are different, both as to the forms of procedure and pleading and as to power; the former being subject to review, and the latter, practically speaking, final and exclusive.

1. The small debt jurisdiction of the sheriffs is now regulated by the act 1 Vict. c. 41. By that statute all civil causes or prosecutions for statutory penalties, &c. that may competently be brought before them, where the debt, demand or penalty does not exceed the value of £8: 6s. 8d., may be tried in a summary way.¹ In this class of cases, the cause is brought into court by a short writ or "complaint," referring, when necessary, to the account or other document forming the ground of action, and which is appended to it. The parties may appear either personally or by a representative, but procurators or attornies are not allowed to appear for them, except on cause shown, and which must be entered on the minute or record book of court. The pleadings are entirely *vivâ voce*, and no written note of the evidence adduced requires to be taken either by the judge or the clerk of court. The judgments of the sheriff in his small debt court are subject to review only on the ground of corruption, malice or oppression on his part, of incompetency or want of

¹ The sum of £8: 6s. 8d. is equivalent to 100*l.* Scots, which, according to the rule of the older law of Scotland, is taken as the standard above which a debt or obligation is to be considered as one "of importance."

jurisdiction, or of such deviations in point of form from the enactments of the statute, "as the court shall think," have taken place wilfully, or have prevented substantial justice from having been done. An appeal in such cases is competent either to the High Court or the Circuit Court of Justiciary for the district; but no appeal upon the merits of the cause from the judgment of the sheriff (under the exceptions just mentioned), on the question either of fact or of law is competent, and practically his decision is final and conclusive. A small debt court is held every week or fortnight, according as is required by the amount of business in the county town, which is the seat of the Sheriff's Court; and in addition to this, Circuit Courts are held at regular intervals of two or three months at different places throughout the county which have been fixed as most convenient for the resort of suitors.

2. The ordinary jurisdiction of Sheriff Courts is exercised in all those cases formerly mentioned, where the value in dispute exceeds the sum of 8*l.* 6*s.* 8*d.* In the ordinary court, action is commenced by a formal summons; and the subsequent pleadings are all in writing, and constructed in a similar form to those employed in the Supreme Court. There is no trial by jury in civil causes, and when a proof by witnesses of disputed facts is necessary, their depositions are taken down in writing, in the presence of the judge, or of a commissioner appointed by him. All judgments pronounced by the sheriff-substitute in the ordinary court may be appealed to the sheriff principal; and his decisions are, in almost every case, subject to the review of the Supreme Court, by the forms termed advocacy or suspension.

Such, then, are the extent and the character of the jurisdiction of the Sheriff Courts in civil matters; but the sheriff has, in addition to this, an important criminal jurisdiction. He has a jurisdiction in all crimes and offences committed within his bounds, which have not been reserved either by statute or inveterate usage for the sole cognizance of the Court of Justiciary. The crimes of murder, robbery, rape and fire-raising—the four pleas of the crown—by very old custom, can be tried only by the Supreme Criminal Court; but, with the exception of these and some grave and important statutory offences, almost every other offence, and many which are still, in theory, capital ones by the law of Scotland, may be competently tried before the sheriff of the county. Thus, assaults of the most aggravated kind; thefts of property to the greatest extent; forgery, and uttering of forged documents, or of base coin; falsehood and fraud, or swindling; breach of trust or embezzlement; perjury and subornation of perjury, are crimes which are every day tried in the Sheriff's

Criminal Court. But, though his jurisdiction is thus so extensive, his powers of sentence at the present day are but limited. The extent of the latter depends on the way in which the trial takes place. Trial before the sheriff is either with or without a jury. The latter is termed summary trial, the form of procedure being regulated by several acts of parliament and acts of adjournal, or regulations of the Court of Justiciary; and in this case his power is limited to a fine of 10*l.* or a sentence of sixty days imprisonment.¹ When the trial is by jury, the form of procedure is very similar to that in the Supreme Criminal Court; but the sheriff cannot pronounce a sentence of transportation, his power now extending no further than to one of imprisonment for two years. In both forms of trial the prosecution takes place at the instance of the procurator fiscal, the official and public prosecutor for the county; prosecution at the instance of private parties being, in practice, now almost unknown in Scotland. Sentences pronounced in the Sheriff and other inferior Criminal Courts, whether the trial has been with or without a jury, may be brought under the review of the Supreme Criminal Court, on the ground of incompetency or error in the course of the proceedings, either by advocacy, when the sentence has not yet been carried into execution, or by suspension and liberation, to suspend or terminate its execution.

In conclusion, it will not be out of place to add a few words with regard to the remuneration of the local judges in Scotland.

With the exception of the sheriffs of Edinburgh and Lanarkshire, who require to be resident within their counties, and cannot practise before the Supreme Court, and who receive salaries of 1000*l.* a year each respectively, the other sheriffs are moderately remunerated. The highest salary is 400*l.*, the others ranging from that sum down to 300*l.* Some of the sheriffs, however, from being *ex officio* members of the general prison board, and the board of supervision under the poor law statute for Scotland, are entitled to an additional allowance. But the sheriffs, as already stated, in theory are required, and in fact mostly are in attendance on, and in practice before the Court of Session. Their official emoluments, therefore, are in addition to those derived from their actual practice at the bar.

The highest annual salary of the sheriffs-substitute, at the full amount, is 500*l.*, and the lowest 300*l.*, with the exception of the substitutes in Edinburgh and Glasgow, who each receive 600*l.*²

¹ 6 Geo. IV. c. 23; Act of Adj. 17th March, 1827; 9 Geo. IV. c. 29; 11 Geo. IV. & 1 Will. IV. c. 37.

² Only the annual salaries of the sheriffs and their substitutes have been stated,

Upon the appointment of each sheriff-substitute, however, he is not at once entitled to the full salary; it commences at 50*l.* below the full allowance, and only rises at the rate of 5*l.* annually until it reaches that amount. Thus, in a county where the highest salary is allowed, the judge receives for the first year only 450*l.*, and ten years must elapse before he can claim the whole 500*l.* Out of their allowances, the sheriffs-substitute have to defray the whole travelling and other expenses incurred in holding their circuit small debt courts, which in some counties, when the distance between the seat of the district courts is great, and especially where there are no means of conveyance by railway (which is the case in many, and particularly the more northern counties), amount to a heavy sum. Considering, therefore, the character and qualifications of the sheriffs-substitute at the present day, that many of them are members of the bar, and that all of them are from their position entitled to associate with the county gentlemen, with whom also they are bound to meet at the different local boards and committees, of most of which they are *ex officio* members, and of some chairmen of committees, it can scarcely be said that they are adequately paid for the performance of their important and responsible duties.

but in addition to these they are entitled to fees for some of their official duties. Except in Edinburgh and Lanarkshire, however, the amount of fees is very small: but in these two counties a considerable sum is derived from this source. The division of the fees is a matter of arrangement between the sheriff and his substitutes.

D.

ART. IV.—THE HISTORICAL AND ACTUAL RELATION BETWEEN COUNSEL, ATTORNEY AND CLIENT.

[It is the object of this article to put forth all that can be urged practically or historically for the direct access of client to counsel. It must not be inferred that our own views on this subject are thereby compromised.—Ed.]

-
- “ To secure men’s persons from death and violence :
 - “ To dispose the property of their goods and chattels :
 - “ For the preservation of their good names from shame and infamy.”—

SUCH, according to Bacon, are the uses of the law : and, it is obvious at a glance, that the casualty of a moment may render one or other of them necessary to any man, woman or child, from the highest to the lowest. And, when it is remembered that every English subject is presumed to know the law, the demand that no unnecessary obstacle should be allowed to exist in the way of obtaining, promptly and easily, the best legal assistance, is at least worthy of the consideration we propose to give it.

We do not allude to the internal code, by which the Bar profess to govern themselves, which is (in theory) enforced by stringent regulations, but which is notoriously violated, or avowedly useless in every respect. Such is the self-denying ordinance, that, during the assizes, a barrister may not dine with an attorney—although he has the privilege, which by many is freely exercised, of being extremely civil in the passages of the court ; and that other rule, that a barrister may not enter an assize town before the commission-day—although the clerk is allowed to waive this law, and to enter the cover before his master, and to put up the game for him. With such internal regulations we do not propose to deal, but solely with that enactment which affects the public, and forbids the client, however intelligent or honest, or however clear the facts of his case may be, from consulting the barrister personally, or engaging his services as an advocate without the intervention of an attorney.

The opponents of all change are the attornies, and those barristers who are dependent on them : they allege the great conveniences of the present system, and the difficulties that would ensue upon an alteration.

It must be admitted that, in theory, no system could be devised better adapted to winnow the pure materials from which the legal merits are ultimately to be extracted. If a merchant

apprehends that a person with whom he has contracted has made default, after a reasonable effort to establish what he conceives to be his right, he has recourse to the attorney; that functionary, practically skilled in the dealings of mankind, probes the transaction in all its bearings—all that has passed between the parties he endeavours to elicit, and every document relating to the matter is laid before the preliminary inquisitor in this domestic inquiry; when every information is obtained, it is arranged succinctly into a case for the opinion of counsel. So far, the attorney has discharged his duty; and the advantages in theory cannot be denied.

On the other hand, it is argued that, in many instances, the client would be able to put the barrister in possession of facts and documents with as much ease as the attorney; nay, that the barrister would sooner see the point decisive of the whole question, would direct all information to be concentrated upon that point, and would thus disembarass the case of numerous details which the attorney charges high for investigating; that he would see all original documents, and from his insight into matters of business acquired by varied experience, and from his tact in examining witnesses, would soon ascertain the *bond fide* merits of the case.

The barrister is threatened, by some objectors, with an inextricable mass of details, which he will neither have time nor ability to unravel: the answer is, that it is not contended that he should be called upon to discharge this duty. Such cases should be sent to an attorney, to undergo the sifting process; and, undoubtedly, these difficulties would adjust themselves, without "fusing" the two branches of the profession. They would exist distinct, as they exist in other countries, and as they did in England two hundred years ago. It is, however, urged that the attorney should be paid only when his services are required; that, in all other cases, where his intervention is merely formal, and the client could orally instruct his counsel, there should be the right of free communication. To a similar objection, that briefs from suitors would convey insufficient instructions, we answer that this abuse would work its own cure.

Finally, a passive objection exists in the effeminate fastidiousness of some gentlemen of the Bar, whose ability and influence are admitted. They have been kept so long aloof from the suitor that they dread coming into contact with him, as though he were a leper or a torpedo. They are as shy of the outer world as the ladies of a harem, or the inhabitants of the Celestial Empire; although they have a commodity which they are willing to part withal, when it is made worth their while. But these

refined and amiable persons labour under an infatuation. They may rest well assured that barristers would not lose caste. Let the people approach the living oracles, and their reverence would not vanish with proximity. This is not mere argument. In the days of old, when all men at the Bar were gentlemen of true descent, the counsellor-at-law freely advised the suitor without the intervention of the attorney; and every serjeant-at-law had his pillar assigned him in the "pervyse" of St. Paul's, where the public could consult him, as he sat with his tablets on his knee.

We now proceed to investigate the legal history and former position of that functionary for whose benefit the rule appears to have been established.

The word *attourné*, attorney, signified in the old law, one placed in the turn or place of another to perform an act for him. By the old common law of England, parties to suits were compelled to appear in person; the reason assigned was, the injustice of placing a third party in a situation where he might be liable for the crime of his principal, for in those early days penal consequences sometimes attended the failure of a suit; but, by a writ from the crown, the privilege could be obtained of appearing by attorney.

The first statute for the relief of the subject was the 20 Hen. III., A.D. 1235, by which "it was provided and granted, that every freeman which owed suit to the county, tything, hundred, and wapentake,¹ or to the court of his lord, might freely make his attorney to do those suits for him." But we regret to say that some years afterwards (3 Edw. I.), A.D. 1275, a statute was passed, directed against them, describing them as barretors and maintainers of quarrels, and threatening them with grievous punishment, and also the sheriff who encouraged them. About this time the lawyers generally seem to have abused their position, for we find a further provision made against "any manner of deceit or collusion in the king's court, on the part of any serjeant, pleader, or other," extending, as Lord Coke explains it, to apprentices, attornies, clerks of court, or any other.

But the most important enactment in relief of suitors was passed (13 Edw. I. c. 10) A.D. 1285. "Our lord the king, of

¹ Lord Coke, 2 Inst. 99. "That which in some countries is called a hundred court, in some countries is called a wapentake. Now the reason of the name was this; where any one on a certaine day and place took upon him the government of the hundred, the free suitors met him with launces, and he descending from his horse, all rose up to him, and he holding his lance upright, all the rest, in signe of obedience, with their launces touched his lance or weapon: for the Saxon word wapen, is weapon, and tac, is tactus or touching, and therefore this assemblie was called wapentake, or touching of weapon."

his special grace, granteth that such as have land in divers shires where the justices make their circuit, or that fear to be impleaded of lands in shires where the justices have their circuit, and are impleaded of other lands in shires where the justices have no circuit, or before the justices at Westminster, or in the King's Bench, or before justices assigned to take assizes, or in any county before sheriffs, or in any court baron, may make a general attorney to sue for them in all pleas in the circuit of justices, moved or to be moved for them or against them, during the circuit, which attorney or attorneys shall have full power in all pleas moved during the circuit, until the pleas be determined, or that his *master* (the client) remove him; yet shall they not be thereby excused, but they shall be put in juries and assizes before the same justices." An entry shortly afterwards follows, by which the chief justice and the other judges are empowered to appoint a certain number, that is, to admit certain persons to be attorneys of the court.

Here then we have a distinct body of men duly appointed by the judges, who have continued until the present time.

Seven years after this enactment (A.D. 1292), we find the following entry in the parliament roll: "Of attornies and apprentices, our lord the king hath enjoined John de Mettingham and his fellows, that they of their discretion appoint and provide a certain number out of every county, of the better and more learned, and such as they should think best for the good of the people and the service of the court." They were to have an exclusive privilege, and it appeared to the king and his council that seven score would suffice, but the limit was left to the discretion of the justices, who, no doubt, obeyed the suggestion.

It is the opinion of a very learned and competent lawyer, Mr. Serjeant Manning (*Serviens ad Legem*, Ap. No. XIII.), that the "apprentices" (students) and attornies constituted one body; though, perhaps, it would be more correct to say that the latter sometimes adopted the designation more proper to the former; and he quotes the petition to the king in council (11 Edw. III.), A.D. 1337, of one John de Codryngton, who describes himself as an "apprentice of our lord the king, and attorney," praying to be exempted from the requirement of Sir J. de Ros, who had commanded him to be at Orwell on Wednesday, the 17th of March, well and completely armed and apparelled as a man-at-arms, and that, upon pain of being hanged. The answer to this petition was, that, "inasmuch as he is an attorney, let it be commanded to Sir J. de Ros, or his lieutenant, that they surcease from the demand which they make against him, and the distress which they do to him for this cause."

In the following reign, in a subsidy granted to Richard II., A.D. 1379, we find the following assessment :

“ Also every serjeant and great apprentice of the law, each 40*s*.

“ Also, other apprentices who follow the law, each 20*s*.

“ Also, all the other apprentices of less estate and attorneys each, 6*s*. 8*d*.”

Similar evidence is afforded by the command above quoted to John de Mettingham and his fellows.

It is not impossible that the attorneys, in this early period when they do not appear to have undergone a formal examination, were allowed to enter the inns of court, and participate in the advantages of the legal education afforded by them. They would thus become identified in name with the “ apprentices of the law,” the students intended for the bar. It is important also to remember, that they were generally confined to the smaller inns of chancery, which bore the same kind of relation to the larger “ inns of court,” that the halls in our universities do to their respective colleges. Fortescue, in his treatise *de Laudibus*, says, that these inns were so called because the students in them were, for the greater part, young men learning the first elements of the law, who, becoming great proficient therein, as they grew up, were taken into the great hostels, called the inns of court. It is tolerably clear that at a later period these smaller inns became almost exclusively devoted to the attorneys; for about the middle of the seventeenth century we hear of that clever and vagrant boy, who afterwards became “ The most learned Sir Edmund Saunders, Knight,” and Chief Justice of the Common Pleas, becoming a great favourite with the attorneys of Clement’s Inn, and obtaining a stool in an office there. We find also a general order of the 15th April, A.D. 1630 (6 Chas. I.), sanctioned by the authority of the judges and privy council, by which it was enacted, “ that the innes of chauncery should hold their government subordinate to the benchers of the innes of court unto which they belong. And in case any attorney, clerk, or officer of any court of justice, being of any of the innes of chauncery, shall withstand the direction given by the benchers of court, upon complaint thereof to the judges of the court in which he shall serve, he shall be severely punished, either by forejudging from the court or otherwise, as the case shall deserve.”

But although the attorneys and students were both known by the common designation, “ Apprentices,” i. e. learners, as being engaged in the same course of study, there can be no doubt that there was a marked distinction between those who were intended for the Bar, and those who practised in the

inferior capacity. Thus, when we hear of "apprentices" arguing in court, as in the great case of *Paston v. Genny, Serjt.*" (11 Edw. IV. fo. 2, pl. 4, A. D. 1471), where Littleton, J., says, "If all the serjeants were dead, we could hear the apprentices to plead here by necessity, in ease of the people," we are to understand, not the attornies, who were officers of the court, but those intended for the Bar, who had the privilege of seeing clients and "attending them to the bar of the court, as Dugdale says, although not sufficiently advanced to act publicly as advocates: they seem indeed to have resembled our modern "special pleaders." When we meet with the phrase "attorneys and apprentices," we may sometimes understand the designation of persons by a double title; and perhaps not "the common attorney" in all cases, but one specially appointed as a "general attorney" to act during absence from England, or incapacity, who might well be a member of an inn of court.¹ Remembering the dignity of members of the inns of court in old times, and the constant attendance required of them, it is difficult to understand how they could become "common attorneys" dispersed through the country and hawking their services at fairs and market places.

We will resume our narrative at the period when their numbers had been limited in the commission to John de Mettingham (A.D. 1292). We find that the Statute of Carlisle was passed (15 Edw. II.) A.D. 1322, in which occur the following enactments: "We will not that any of our barons of the Exchequer, or our justices, shall admit any attorneys, but only in pleas that pass afore them in the benches and in places where they be assigned by us. And the same power of admitting attorneys we deny and prohibit to the clerks and servants of the said barons and justices; and do ordain that if any attorneys be admitted hereafter by any of the persons aforesaid, their admission shall be of none effect. Reserved alway to the chancellor for the time being his authority in admitting attorneys, according to whose discretion they shall be admitted, and our chief justices, as heretofore hath been observed in the admission of attorneys."

The most important recognition of attornies as legal practitioners occurs in the 4 Hen. IV. c. 18, A. D. 1402—"The punishment of an attorney found in default:" it alludes to sundry damages and mischiefs that had ensued to divers persons of the realm by a great number of attornies, ignorant and not learned in the law, as they were wont to be before that time; and enacts that all the the attornies be examined by the justices,

¹ Mr. Serjeant Manning holds that "apprentices" became attorneys, 15 Q. B. 225; but is not the converse true?

and by their discretions their names put in the roll, and they that be good, virtuous and of good fame, be sworn to serve well and truly in their offices, and especially that they make no suit in a foreign county, it enacts that the other attornies shall be put out by the discretion of the court, and their *masters* (not their clients) be warned to take others in their places. If any of the attornies died or ceased to practise, others were to be appointed, virtuous men and learned, and sworn as aforesaid; "and if any such attorney be hereafter notoriously found in any default of record or otherwise, he shall forswear the court and never after be received to make any suit in any court of the king."

Lord Coke, who appears to have borne no good will to this branch of the profession, and charges upon attornies, and their "multiplication," the great increase of litigation in the time of Elizabeth and James I., seems to have had good reasons for his complaint. That they became a serious evil to the community before his time, is clear from the following petition in the Parliament Rolls (v. 326), 33 Hen. VI. c. 7, A. D. 1435, which we transcribe entire as a valuable illustration of the political state of the people in that age:—

"Prayen the commons, that whereas of late were but vi. or viii. common attorneys within youre citee of Northwyche (Norwich) and countees of Norfolk and Suffolk, at ye moost, that resorted unto youre courts, in which tyme yer was grete quiets and peas in youre seid citee and countees, and litell trouble or vexation, had by foreyn or wrongfull sewtes; and hit is so now, that yer be in the seid citee and countees, ^{xxx}iiii (four score) attorneys or moo, the most parte of theym not havynge any oyer lyving, but oonly yer wynnyng by yer seid attorneyshep, and the moost part also of theym not beyng of sufficient konnyng to be any attorney, which goo to every faire, merkette, and oyer places where congregation of peouple is, and stere, procure, meve and excite the people, to take untrewes sewtes, foreyn sewtes, and seutes for lite trespasses, lite offenses, and smale sommes of dette, the actions of whome be triable and determinable in Court Baron, affermyng and promysing the seid people, for to have recovere with grete damages for their costages; the which causeth many a sewte to be take for evil wille and malice, without reasonable cause; and also the seid attorneys, before any recovere or remedy had for their clientes, sewe ye same clyentes for their fees, and have them in exigents, and oftentime outlawe them or they be ware; and than woll (then will) the seid attorneys not ende with their seid clyentes, but if they have their costes and fees atte yer owen wille, as well for the seconde action as for the first, to ye grete and importable (insupportable) damages, manyfold vexation and trouble, of the inhabitauntes of ye seid citee and countees, to the perpetuell distruction of all ye courtees baron in the seid countees, oonlesse yan (one) the sooner remedie be had in this behalf:

“ Hit please therefore unto youre Highnesse for to have thees premisses in your tender consideration, and thereuppon of youre moost noble and benygne grace, by th’ advis and assent of the lordes spirituall and temporell of yis youre noble reame of England, assembled in this present Parlement, and by auctorité of ye same Parlement, for to ordeyn and stablish; that at all tymes hereafter, ther be but vi. common attorneys in the seid countee of Norff’, and vi. common attorneys in the seid countee of Suff’, and ii. common attorneys in the seid citee of Norwiche, to be attourneys in court of record; and that all the seid xiiii. attorneys be electe, and admitte be youre too chieff justices for the tyme being, of the moost sufficient and best lerned after her (their) wise discretion; and that the election and admission of all attorneys, that be electe and admitted be the seid justices for the tyme beyng, over the seid noumbre in the seid countees be void and of noon auctorité ne recorde. And if that ther be any persone or persons, that presumeth or take upon hem for to be attorney in court of record in the seid countees or citee, otherwise than is above specified, and hit so founde by inquisition take before the justices of ye pees in the seid citee or countees, which by force of this ordinaunce shall have power thereof in their cessions, or in any othir wise lawfully proved; that than he or they that so presume, if he be lawfully thereof convicte, forfeite xxli. (20*l.*, a very heavy fine in those days), as often as he or they so be convicte, the oon moitee to hym that wolles sewe therfor, may have an action of dette agayns any such persone that so presumeth for to be attorney, and such processe and recovere therein, as lieth in an action of dette at the common law upon an obligation; for the love of God, and in the weye of charitee. Provided alwey, that this acte begynne and furst take effect at the fest of Estr’ next commyng and not afore. The king graunteth yis petition, if it be thought to the juges resonable.”

It did seem to the judges reasonable, and a law was passed accordingly.

After this period we hear of occasional instances of malpractice in the reports; but the legislature is silent, probably confiding in the control exercised over these functionaries by the judges and the inns of court. These learned bodies appear gradually to have been brought into discredit by their connexion with the attorneys of that age. For by a General Order, promulgated by the authority of the Privy Council and the judges, for the regulation of the four inns, dated 22nd January, A.D. 1557, in the 3rd & 4th of Philip and Mary, it is declared—

“ That none attorney shall be admitted into any of the Houses. And that in all admissions from henceforth this condition shall be implied; that if he that shall be admitted practise any attorneyship, that then ipso facto to be dismissed; and to have liberty to repair to the Inn of Chauncery, from whence he came, or to any other, if he were of none before.”

This was followed by another General Order of the 16th Eliz. A.D. 1574:—

“ If any hereafter admitted in court practise as attorney or solicitor, they to be dismissed and expelled out of their Houses thereupon: except the persons that shall be solicitors shall also use the exercising of learning and mootings in the House, and so be allowed by the Bench.”

To the same effect is another Order, dated 7th November, A.D. 1614, 12 Jac. I.:—

“ For that there ought alwaies to be preserved a difference between a counsellor at law, which is the principal person next unto serjeants and judges, in administration of justice, and attourneys and solicitors, which are but ministerial persons, and of an inferior nature; therefore it is ordered, that from henceforth no common attorney or solicitor shall be admitted of any of the Four Houses of the Court.”

There is a similar General Order, dated the 15th of April, A.D. 1630, 6th Car. I., and another, in the 16th of Car. II., to this effect:—

“ For that there ought alwaies to be observed a difference between utter barristers, readers in court, and apprentices-at-law, which are the principal persons next unto serjeants and judges in administration of justice, and attorneys and solicitors, which are but immaterial persons of an inferior nature; therefore it is ordered, that from henceforth no common attorney or solicitor shall hereafter be admitted of any of the Four Houses of Court.”

We see that about this period there was a marked desire on the part of the inns of court to terminate their connexion with the attornies; and the following statute will perhaps supply a reason.¹ It was passed in the 3rd of James I., A.D. 1605, and is styled “ An Act to reform the Multitudes and Misdemeanors of Attornies and Solicitors-at-Law, and to avoid unnecessary Suits and Charges in Law.” It commences with the following preamble!—“ For that through the abuse of sundry attornies and solicitors,² by charging their clients with excessive fees and

¹ Mr. Maugham (the Secretary of the Law Institution), when examined before the Committee on “ Legal Education ” (p. 159), could not imagine why.

² “ The term solicitor appears to include all persons taking care of, prosecuting or superintending the affairs of others, more peculiarly matters in litigation; and the vocation of common solicitors, or persons well practised in suing out process, soliciting causes, and managing the evidence, &c., and subordinate to and distinct from the office of an attorney, seems, long previous to the statutes regulating the profession of attornies, to have been well-known in our courts of common law.” (Pulling's Law of Attornies and Solicitors, 2, 3.) By a rule of C. P. 1654, Mich., attornies before admission must have practised five years as solicitors.

other unnecessary demands, such as were not, he ought by them to have been employed or demanded, whereby the subjects grow to be overmuch burthened, and the practice of the just and honest serjeant and counsellor-at-law greatly slandered. And for that to work the private gain of such attorneys and solicitors, the client is sometimes extraordinarily delayed:"—it then proceeds to enact, that no attorney, solicitor, or servant to any, shall be allowed from his client or master any fee given to counsel, or the expense of any copy procured from the officers of the court, without a voucher from such counsel or officer. There is a further provision that they shall deliver a signed bill; and that if they willingly delay their clients to work their own gain, or demand by bill any sum on account of monies which they have not disbursed, in every such case the party aggrieved was to have his action, and to recover treble damages, and the attorney was to be dismissed. The second section proceeds thus:—"And to avoid the infinite number of solicitors and attornies, be it enacted, by the authority of this present parliament, that none shall from henceforth be admitted attornies in any the king's courts of record aforesaid but such as have been brought up in the same courts, or otherwise well practised in soliciting of causes, and have been found by their dealings to be skilful and of honest disposition; and that none to be suffered to solicit any cause or causes in any of the courts aforesaid, but only such as are known to be men of sufficient and honest disposition." They were not allowed to practise in each other's name, on pain of forfeiting 20*l.*, and losing their office.

After the General Orders above quoted, the attornies appear to have fallen more immediately under the cognizance of the judges, who in the year 1654 made certain rules for their qualifications, and appointed a committee of the body to remove those members who were notoriously unfit, and to examine candidates before admission. A form of oath was also prescribed, by which, among other things, they were sworn to do no falsehood or deceit, nor delay any man for lucre or malice; to increase no fees, but to be contented with the old fees accustomed. It is also remarkable that they were required to join some inn of court or chancery, partly that the latter houses might not fall to decay, partly that they might be conveniently found by their clients. The inns appear to have relaxed their rules; but, as a general fact, it seems clear that the attornies resorted to the smaller inns of chancery. As a corporate body their regulations were a dead letter, and henceforth we find them individually amenable to the judges of the different courts. They are now excluded from all the inns of court. A curious illustration of their condition is afforded by

the 29 Geo. I. c. 4 (A.D. 1725,) which, after reciting "the great mischiefs and abuses which arise from infamous and wicked persons already convicted of wilful perjury and forgery, practising as attornies or solicitors in courts of law and equity," provides, that any person who after such conviction shall so practise, and every common barretor, shall be liable to be tried in a summary way in open court, and transported for seven years.

In 1729 was passed the 2 Geo. II. c. 23, which forms the basis of all the subsequent provisions regulating the qualifications and admittance of attornies; this is the first statute which required them to send their signed bill of costs a month before commencing an action for their fees.

Up to this period, they appear to have been more strictly confined to the duties of procurators in suits; and seem to have incurred the disparagement common to those functionaries in all countries, and in all ages. Their present position is very different; they possess a corporation, and consist of a better educated and far more respectable class of men, and perform very numerous and important public duties.

A learned writer (Pulling's Law of Attornies, p. 4) after describing their general duties as agents before parliamentary committees, and other public bodies, thus proceeds: "It appears moreover to come within their legitimate and peculiar province at the present day, to draw and prepare agreements, wills and settlements, securities and documents (though this was formerly considered out of their province), and also to conduct negotiations, procure and solicit loans, superintend the management of, and the letting, purchasing, and selling of property, estates and annuities, to collect and receive rents, debts, &c.; invest and dispose of monies, and find sufficient securities for such purposes; to investigate the titles to property offered as security or investments; make arrangements between debtors and creditors, and parties in numerous other relations, domestic or commercial;—thus acting generally in the distinct characters of procurators, negociators and conveyancers, confidential advisers, agents, stewards, receivers, collectors, &c., and performing of the other duties anciently devolving on scriveners."

It cannot be denied that the pecuniary benefit of the rule has been solely the attorney's. The history of that rule, which forbids the public from access to the barrister, whether in the capacity of counsel or advocate, has lately undergone a thorough investigation; and we shall only call attention to the value of the privilege, formerly enjoyed by the people, of direct access to the barrister, and to the period in which it appears to have been lost.

In the *Mirror of Justices*, of the time of Edw. II., it is said : "Serjeants are pleaders, who serve the common people who have need of them for fees." The importance of this higher order of "pleaders" may perhaps be appreciated by the reader, when he has perused the account of the ceremony which accompanied their appointment.

Fortescue says, "neither in any country in the world is there any special degree given in the laws of the same land, but only in the realm of England: neither is there any man of law throughout the universal world, which, by reason of his office or profession, gaineth so much as one of these serjeants."—"To this state and degree hath no man been hitherto admitted, except he hath first continued by the space of sixteen years in the said general study of the law: and in token or sign that all justices (judges) are thus graduate, every one of them always, whilst he sitteth in the king's court, weareth a white quoif of silk, which is the principal and chief insigniment of habit, wherewith serjeants at law in their creation are decked; and neither the justice, nor yet the serjeant, shall ever put off the quoif, no not in the king's presence, tho' he be in talk with his majesty's highness."

Dugdale (xliv.), after describing the ceremony of making certain serjeants in the reign of Hen. VIII., their assembling in the hall of their inn, and the interchange of formal speeches, proceeds:

"And after that doone, the newe Serjaunts goo togedyr, oon of them takynge anoder be the arme, and goo forth toward the place wher as the Serjaunt's feest shall be kepte: and all the companye, as they be in auneyentie (in order of seniority) folow theme twoo and twoo togedyr: and when they come to the place wher as the Serjaunt's feeste shall be kepte; ther shall be redy to receyve them at ther fyrst entryng into that place, the hie styward and countroller, which shall conveye them into the place, wher as they shall have spiced bredde, comfeits and oder godely conceyts with ypocras."

After which "rekreatione," it appears that they retired to their chambers. On the following day they went to Westminster, and went through a form of pleading, and then kneeling down before the justices of the King's Bench were by them invested with "the coyffs, and their scarlet hodes about their nekkes." On this day the judges dined in the hall of the inn of court to which they belonged: at this ceremony

"The Chief Justice of the Kynge's Benche commaundeth all the newe Serjeaunts to wasshe, and sit downe, whiche sitte downe in ane order, oone a lytell distaunce from anoder, and yche of them hath a karvar stondyng before hym, and two of the newe Serjaunts sitt at oone mese, and so dyne with sober countenance and lytell commu-
ny-

cacion. And after that they have dyled, they rise up and go afore the Justices, and make dewe obedience to them, and then stonde ageyne in lyke order as they did affore they satte downe.

"And afterward the Justices arise, and wasse, and geffe thanks onto the newe Serjaunts for their gode dyner."

The serjeants returned the compliment, and thus ended this day's ceremony.

On the Monday following, they went "soberly" to Westminster about nine in the morning, attended by the Warden of the Fleet, and the Chief Marshal of the Common Pleas, and their officers and servants in their liveries. After making their offerings to "Our Ladye of the Pewe," they adjourned to the court where their rings were presented to the judges and great officers of state. The eldest serjeant stood up, and rising upon "the midst of the borde of the Common Pleas," there made a low curtesy, then stepping upon the bench, and kneeling between the two pronotaries before the Lord Chancellor, kissed the rings and delivered them to the Lord Chancellor, the Lord Treasurer and the others in order. The rings having been thus presented, the Lord Chancellor gave them thanks for their rings, "and a great commendation, and his solemn blessing."

They then returned to their chambers, to their wives and friends, dined and afterwards proceeded, "in a sober manner," with their officers and servants into London, "oone the Est syde of Chepe syde, over to Saint Thomas of Acres, and ther they offer, and then come down on the West syde of Chepe syde to Powles (St. Paul's), and ther offer at the Rode of the North door, at Seynt Erkenwald's shrine, and then goo down into the body of the Church, and ther they be appoynted to ther Pyllys by the Styward and Controller of the Feste, which brought them thidder with the oder officers."

At the time of making a further batch of serjeants in the reign of Edw. VI., we find as guests, at the dinner given upon the occasion, the Lord Chancellor, and "other noble menne, Lords and Gentlemenne of worshipp and good callynge:" as also the Lord Mayor, Aldermen, and Sheriffs. After dinner "the newe Serjeaunts went to Paule's and there eche of them stode at thejr several pillers in the body of the Church, accordyng to the aun-cyent custome in that case used: and frome thens they camme to Sergeaunt's Ynne, every of theme to their several chambers, and there remayned."

It was not merely in deference to a form that this solemn pilgrimage to St. Paul's was made, nor for the mere purpose of claiming their particular pillar, for religious purposes, as suggested by Mr. Serjt. Manning (*Serviens ad Legem*, 218), but, as

it were, to do homage to a public right, and to affirm publicly the principle of accessibility to the people. For Dugdale (142) relates as follows : "There is a tradition that in times past there was one Inne of Court at Dowgate, called Johnson's Inne ; another in Fewter (Fetter) Lane, and another in Paternoster row, which last they would prove, because it was next to St. Paul's Church, where each lawyer, and serjeant, at his pillar heard his client's cause, and took notes thereof upon his knee ; as they do in Guildhall at this day.

"And that after the Serjeants' Feast ended, they do still go to Paul's in ther Habits, and there choose their pillar, whereat to hear their clyent's cause (if any come) in memory of that old custome."

That old custom is said to have continued up to the time of Charles I. In the previous reign, it will be remembered, that a statute was passed against "the multitudes and misdemeanors of attornies," and it is not improbable that at this period they were so numerous as to blockade the Bar, and to intercept the great body of the suitors more effectually than they had hitherto done. For although Lords Hale and Guildford afford evidence that the custom of receiving clients still prevailed at the Bar, it seems clear that their promotion was greatly dependent upon the attornies.

The rule appears to have become more general in the subsequent century, and the famous anecdotes related of Lord Mansfield, who accepted only five guineas of the general retainer of a thousand sent him by Sarah, Duchess of Marlborough, and the visits he received from her, seem to establish rather the exception. There is no record of its exact origin.

Let us now proceed to inquire whether its existence can be justified by the example of the ancients, or by the precedent of modern states.

In Athens, it is important to remember, that a trial was attended with considerable complication both of form and pleading. The complainant appeared before the chief archon in the odeum, or before one of the six puisnés (Thesmothetæ), who sat, crowned with myrtle, for the purpose of hearing complaints, of directing process, examining the parties, allowing or disallowing the action, and conducting the suit through its various stages. He obtained a summons, which compelled the appearance of the defendant upon pain of outlawry. When both parties were confronted before the magistrate, he examined them both and allowed them to interrogate each other. Their allegations and counter-allegations formed a technical system like our oral pleadings of old, and were taken down in writing,

and put into a box which could not be opened, until produced at the trial before the jury or dicasta. Each party was thus made fully acquainted with the law and facts relied on by the other side. Lots were cast for the jury, who varied in number from 200 to 500, although sometimes large tribunals occurred of 1500, 2000 or even 6000. The judges (or jury), on the day appointed, having taken their seats in the helicea—a place in the open air, surrounded by a rope—and attended by officers who kept off the crowd, the archon proposed or introduced the cause; the parties appeared, attended by their friends and witnesses and their advocates. It is the opinion of Sir William Jones (see the preface to his translation of *Isæus*) that the advocate was a distinct person from the legal adviser. However this may be, it is tolerably clear that in Athens free trade prevailed in advocacy to an extent that would have delighted Mr. Cardwell, for all authorities unite in informing us that any man whatever, whom friendship or ability recommended to either party, might, with the permission of the court, plead in his behalf. We hear of a certain Nicodemus, who is described as a very profligate fellow; he incurred the chastisement of *Isæus* for acting dishonestly in hopes of the petty fees which he gained by pleading causes; we are told also of *Xenænetus* and his associates—a detestable crew, who were said to have had such powers in speaking that they were often employed as advocates! There was, however, a higher class of men, ambitious of political power, who availed themselves of any great occasion to appear before the public and display their powers. These were “The Orators,” among whom we recognize *Demosthenes*, *Æschines*, *Isæus* and other celebrities, who must not be confounded with the professional advocates, although in time they too degenerated, until we hear of one *Antipho*, of *Rhamnus*, who set the melancholy example of taking fees for his forensic labours.

And now, having introduced our parties into court with their respective advocates, we for the first time become conscious of a certain class of men called (*πραγματικοί*), the pragmatic, who attended to the mechanical details and to the legal points; they were also the law advisers at Athens, and their calling was considered illiberal. They appear to have united the functions of our attorney and junior counsel; but so far from introducing the suitor to the advocate, it would appear (*Cic. de Orat. I., 45, 49*) that they were themselves engaged by the advocate, for a small fee, for the purpose of suggesting the law to him and managing the subordinate duties of the cause.

There are some points of resemblance between the legal systems of Athens and Rome. Here, in the time of Cicero, the

public had the advantage of the wisest advice and the most brilliant oratory; and here too a class of men devoted themselves to the public service, as advocates and as counsel, who must not be confounded with the professional lawyers.

The *jurisconsults* were men of senatorial and priestly rank, who were accessible to all classes, and gave advice, not only on legal, but family matters, gratuitously. It was their custom to walk every morning up and down the forum, as a signal of their offering themselves freely to all who had occasion to consult them; they also sat at home with their doors open, on a kind of throne or raised seat, and were there consulted by their clients. The house of the celebrated augur, *Scævola*, was called the oracle of the city; it was constantly thronged by citizens of all ranks, and was attended by the most exalted persons. It is recorded of him, that in the *Marsic War*, when worn out with age and infirmities, he gave free admission every day to all the citizens as soon as it was light, nor was ever seen by any in his bed during that whole war. One of this body, an intimate friend of *Cicero*, appears to have written law treatises.

The orator was a person wholly distinct from the *jurisconsult*—so much so, that *Cicero*, in a contest with *Sulpicius*, boasts that in three days' time, if he provoked him, he would profess himself a lawyer. Here, as at Athens, in the era we have lately considered, men ambitious of political power undertook the conduct of important cases gratuitously; indeed, there was a law, the *Lex Cencia*, expressly prohibiting these orators from taking fees. Moreover, we find *Cicero* guilty of a shocking breach of etiquette, in vouching his own personal belief of the truth of his cause, and saying "that he had no other motive for defending *Sylla* but a pure regard for justice; and as he had refused to defend others—nay, had given evidence against them from a knowledge of their guilt—so he had undertaken *Sylla's* defence from a persuasion of his innocence."

These men made forensic oratory alone their peculiar study, and left the law of the case to the *jurisconsult*. But *Cicero* wisely contended, as did also *Quintilian* at a later period, that the orator himself should be thoroughly acquainted with the science and practice of the law. The speaker who thus conducted a case was called *patron*, and he whom he represented, his client, whose cause was supposed to be taken up by him on account of that intimate relation supposed to exist between the parties; hence the popular use of the term with us.

Here too, as at Athens, there were professed advocates, termed *causidici*, or pleaders of causes, who represented the interests of suitors in ordinary cases. Of them we hear little, and nothing

that is creditable, in the age of Cicero. They appear to have corresponded to the class of which our learned friends Nico-demus and Xenænetus are specimens, and to have earned, like them, an unenviable notoriety for a rabid kind of fluency.

At this period, too, the suitor had the right of appointing his attorney in court to act for him, called "*cognitor*," when assisting him at the trial and in the preliminary appearances,— "*procurator*," when managing the cause in his absence. These terms do not indicate a particular class, but the duties implied by them were undertaken by anybody from motives of friendship or officiousness. We find Horace, in that admirable Satire, where he scarifies those nauseous sycophants, the legacy-hunters, recommending them to be at the elbow of their posthumous friend, when engaged in a suit, and give him the benefit of their advice—

"*fi cognitor ipse*,"¹

and to be sure to do it themselves. We may here mention that the same poet adverts to the existence of a consulting lawyer, in a line which describes the client as knocking him up as soon as the cock crows.² It is probable that in this, the Augustan age, the public spirit which prompted the old senators under the republic to afford their counsel to the people, had passed away, and that a merely professional body had superseded them.

That, at this period, there was no intermediate agency, may be gathered from the language of Cicero, in his impeachment of Cæcilius:—"They are here, they complain, the whole population of Sicily. To my public faith, which they have now seen and have long known, they fly for refuge: they ask, through me, that you and the Roman people should aid them by the laws. I am the man they have chosen to redress their misfortunes, to avenge their wrongs, to prosecute their suit and to manage their whole case." Certainly it must be admitted that this was a great state trial; and Cicero himself went to Sicily to collect proofs against Verres, the extortionate governor of the island. But etiquette is inexorable alike in all cases and persons, however exalted or important.³

Besides the various characters already described, there was also the general term "*advocatus*," from which our word "*advocate*" is derived, and which appears to have been applied indiscriminately to any person who assisted another in any way

¹ 2 Sat. v. 38.

² 1 Sat. i. 10.

³ It is very much to be lamented that we have no accurate account of the trial of Warren Hastings; it might, in some interesting points, have resembled the old state-trials at Rome.

in the prosecution of his suit, whether by advising, suggesting the form of proceeding, or even by speaking in his behalf.

To follow the vicissitudes of the lawyers, after the overthrow of the republic and the establishment of the empire, affords some instruction to those who care to note the symptoms of declining liberty. By the death of Cicero, the light of Roman freedom was extinguished. The hot turmoil of civil war that raged and overflowed the whole civilized world soon hardened into military despotism; and, henceforth, we hear no more of those orators and statesmen whose mighty power stirred the blood of the Romans like a trumpet. Political ambition no longer paid homage to the popular will—for, alas! the popular will was no more.

In place of the great champions—for Cicero, be it remembered, was but one of a class—we see now only the hired gladiators, the professional advocates (*causidici*). The removal of the orators appears to have given them room for expansion. Horace,¹ in the time of Augustus, describes one of the body as fatigued with forensic labours during the day, and wending his way homeward, attended by his servant, towards the more polished quarter of the city. Juvenal,² in the time of Domitian, describes them as flourishing, and indulging, especially one *Matho*, in effeminate luxury. The Romans, at this period, were so corrupt, and paid such servile reverence to wealth and ostentation, that an advocate who wished to keep his practice was compelled to display the greatest extravagance—to be attended by numerous slaves at the bath and elsewhere, and to keep horses, carriages and servants. They appear to have been presented with articles of vertu, as a reward for their services, besides the ordinary fee. The result was, that they were involved in debt to keep up appearances; while the poor advocate, who had neither the inclination nor the opportunity to run into debt, had but a miserable prospect before him, however great his talents. If he were a Cicero, he would have to wait a long time for a retainer. The profession, however, appears to have had its emoluments and preferments, and the Bar will hear, with many a fond regret, of the bundles of large briefs that accompanied their Roman predecessors. Their style of eloquence is universally condemned. Their powers of talking were, no doubt, prodigious. The satirist above quoted, to whom we are indebted for our information, gives the most forcible idea of utter silence, by saying, that “not even a pleader nor a cryer is to be heard.” Their zeal for their clients was vented in rather a boisterous manner; but, as we have no learned serjeant or “apprentice of

¹ 1 Ep. vii. 47.

² Sat. vii.

the law" in Westminster Hall or at Quarter Sessions, to whom the description can be considered in the most remote degree applicable, we would fain hope that our credulity is mocked by a caricature. We are told¹ that "their hollow lungs bellow forth innumerable falsehoods, and they spout their very insides out." This is rather a free translation; but, as the original cannot possibly refer to any other country than to degenerate Rome, it is immaterial.

It is at this period that we have the most distinct perception of the attorney in another capacity than that of procurator; his name, *pragmaticus*, was, no doubt, adopted from that of the Greek functionary, whom, in many respects, he resembled. He sat near the advocate who pleaded the cause—in seats called "*subselliones*,"² leading us to the belief that his place resembled that of the attorneys with us, called "*the well*"—and combined, as it would seem, the duties of the attorney with those of our junior counsel. He suggested points of law to the pleader, whose absolute dependence upon such a man, at any emergency, was considered, both by Cicero and Quintilian, as a great defect in the education of an advocate. But, although skilled in the highest degree in technical subtleties, he must not be regarded as a lawyer in the highest acceptance of the term: that word may more properly be applied to the *jurisconsult*, whose functions under the empire became almost judicial. Some of them, indeed, had conferred upon them, by the emperors, the privilege of giving sealed opinions (*responsa*), according to which the presiding judge was bound to decide; if conflicting opinions were given, he exercised his own discretion. These opinions, with some of those of the prior *jurisconsults*, were compiled into a valuable code by the order of Justinian.

The attorney, moreover, (*pragmaticus*), performed other duties—those of the *tabellio*, the scrivener, or notary of the Romans, inasmuch as he drew up agreements, wills, &c. But, whatever may have been his various duties, we never hear that he established himself as a turnpike between the public and the advocate; on the contrary, the suitor appears to have paid the entire fee, at once, to that person, who himself selected this subordinate, and paid him accordingly.³

In Russia, the judges are elected by the people in certain districts: but, as the issues are raised on paper by the litigants, who deliver in their respective statements and counter-statements, the lawyers merely drew up these documents, and were

¹ *Tunc immensa cavi spirant mendacia folles;
Conspuiturque sinus.*

² Quint. de Orat. xii.

³ Juv. vii.

of so little importance, that mere practice generally qualified them for the profession. The Courts of Conscience are a peculiar institution. They are small district tribunals, presided over by a judge, whose province it is to reconcile the disputants who appear before them personally, aided by any person whatever who has the ability and disposition to represent their interests; if the judge fails in reconciling the parties, he has no jurisdiction to decide, but, acting only in a preliminary capacity, he sends to the superior courts minutes of the case.

It appears, by a paper in the Report on Legal Education (p. 361), that, in the year 1835, an Imperial Law School was established at St. Petersburg. The first idea of the institution is due to the Prince d'Oldenburgh, the head of the department of justice in the council of the empire; he is stated to have devoted to the object one million of roubles. The purpose of the institution is to form, for the whole extent of the empire, jurisconsults, and especially magistrates, versed in the knowledge of law, and formed to the practice of jurisprudence. "Hitherto, the Russian jurisconsults, with some rare exceptions, have been formed by practice alone; and, in regard to their knowledge, limited almost to the forms of jurisprudence, they might be compared to the pragmatikoi of ancient Greece." Those intended for this department do not proceed to the highest course of study in the school, but are draughted off at an earlier stage; those, however, who are intended for judicial practice, which they enter immediately upon the close of their career, receive instructions in the law of seigniorial jurisdictions, in procedure, in legal medicine, financial law, the law of police, administration law, the provincial laws of countries incorporated with Russia (for example, the German law), and, lastly, in mathematics applied to law.

In Sweden, the barrister and the attorney is the same person. Those intended for the law go through a university education. If they acquire a good private practice, it is not worth their while to accept office.

In Denmark, advocates undergo an examination, and after admission, a course of probation in the lower courts, and when certified by the judge are deemed eligible: they act also as attornies or procurators.

In Prussia, the professed lawyer goes through a university course, and then practises indiscriminately as barrister, attorney, scrivener, district-notary or banker. If the party prefers the judicial career, he can decline all private practice, and by continuing his legal education, and passing through a very strict

examination, become qualified in time to act as assessor at a nominal salary, and ultimately he is appointed a judge.

Indeed throughout Germany, the doctor, or qualified lawyer, performs the functions of both attorney and barrister; there is no procurator, and the process is served by an officer of the court. The duty of preparing the materials for a trial, is not undertaken by the doctor, but devolves upon the client himself, and from the want of the constant superintendence of a properly qualified functionary, many failures of justice occur.

The Roman law prevails in Portugal; there the student passes through a five years' course at a university, and then undergoes two years' pupillage with some practitioner; he performs, when he enters upon his career, the functions of barrister and attorney. A public prosecutor is appointed for a district, and if upon the trial of any prisoner, it appears that he has not retained counsel, one of the young advocates, in their noviciate, is assigned to him; who is, in strictness, entitled to a slight remuneration from the state, but is scarcely ever claimed. This custom reminds one of the practice under the Roman Empire, when the Prætor said,—“*Si advocatum non habebunt, dabo.*” If they shall have no advocate, I will give one. Here, too, the notary derives his name from the old Roman *tabellio*, whose functions he performs.

There is also the procurator, an inferior person, who manages the process in court, as the subordinate of the professed lawyer; he need not go through a university course.

In France, the lawyer, as we understand the general term, is represented by the notary, the *avoué* and the *avocat*. The first and second make up the attorney: the notary draws deeds or contracts, leases, marriage settlements, &c., and superintends the general management of property and its distribution in case of death, and indeed is the general family adviser. His business is considered to be half as valuable again as that of the *avoué*. This person is consulted upon questions of law, and he gives his opinion; he also conducts a case through its various stages, and prepares the brief. In small towns where there is not a sufficient number of advocates, he performs the duties of an *avocat*. This last personage corresponds with the English barrister, his principal duty is that of advocacy; he also advises, and is not forbidden to see the client personally in the first instance; on the contrary, it is usual for him to do so. And here we may notice a great convenience in practice which might be adopted in this country. The client may, if he please, after consulting the *avoué*, take his opinion to an *avocat*, who either confirms it, or assigns his reasons for differing. The

avocat is not prevented from drawing formal documents, and young practitioners sometimes avail themselves of the right. But, upon the whole, among these different classes a recognized division is observed, and each performs its several duties without infringing upon the other.

In Spain, the advocate and the attorney is the same person. A university qualification is necessary, and a certificate from the minister of public instruction. The clergy in this country have the privilege of defending, in the capacity of attorneys, their own cause and that of their parents and relatives, their church and their friends known to be poor; but by special authority from the crown, they can act as attorneys in any case. The word attorney is here applied also to the advocate, and it is to be remarked that here also we find the procurador, who more strictly represents the term, whose duty it is to attend to the mere progress of the legal proceedings.

In the Netherlands, the advocate passes through a university course, and acts as barrister and attorney, except as to the subordinate duties of managing the process in court, which are performed by a procurator.

In the United States of America, the attorney may conduct a case through all its stages, and finally advocate it in court, or he may, if he pleases, associate counsel with him upon that occasion.

In Scotland, where the smaller tribunals have an extensive inchoate jurisdiction, the attorney performs the functions of an advocate, except in critical cases. The advocates during term congregate "upon the boards," as it is termed, a place before the parliament house, and are there personally accessible to their clients; like the Roman senators and the old English serjeants.

It will be observed, that in many instances, although the advocate performs the higher duty of the attorney, there is in addition the procurator, who attends to the conduct of a suit, so that the "line of demarcation" is more or less preserved to a greater extent than is generally supposed; and where there is no procurator, as in Germany, the duty of serving process, &c., devolves upon an officer of the court, analogous to the apparitor of the Romans, or the huissier of the French.

In all these countries, without a single exception, the public have the right of access to the advocate and legal adviser, without the compulsory intervention of the attorney.

At the close of this review we cannot help remarking, that those who choose to scan more narrowly the legal systems of other countries, and compare them with our own, may contem-

plate with a just pride the contrast which England has hitherto presented. The judges, the Bar, and we may add, the attorneys, form a legal institution without a parallel in the history of the world. The judges are pre-eminently a popular body, for popular favour has promoted them, and popular approbation must ratify their appointment. It is true that out of the many candidates whom the public have approved, a partial selection is sometimes made by the minister; but still the public make up the list, and the chances are that they are all sooner or later appointed. The result is, a judicial body, in whose unvarying justice the people as securely confide as they do in the laws of nature. It will be a critical day when the people allow this, their greatest prerogative, to be usurped by a triumvirate of lucky families in Downing Street, who will regard the right to nominate to provincial jurisdictions as so many advowsons appendant.

Nor can we forbear to add, that, from a review of the foreign systems, it would appear that it is only in a free country that a pure order of advocates can exist in conjunction with a true popular element in the administration of justice. The public discussion of even the simplest right, before a popular tribunal, necessarily tends to kindle those just and independent sentiments which can live only in an atmosphere of freedom. The people of England have long enjoyed—may they long preserve—this privilege.

But to return to the point, we say advisedly, after this survey of the foreign legal systems, that we certainly do not anticipate that the attorneys will either die of atrophy or be absorbed by the Bar. Under any circumstances, to arrange a crude mass of materials, to collect evidence, and to correspond, and to prepare numberless formal documents, will still be their peculiar duty; they will continue to perform all the functions of that diplomacy in which they are now so usefully employed. The depositories of family confidence, the negotiators in all complicated difficulties, these functionaries will maintain their position.

With respect to the public, the abolition of the rule which compels them to resort to attorneys, like the removal of a duty from an article of rare consumption which is not a luxury, would at first effect relief but in a few individual instances; some time would elapse before a new system could prevail. The direct intimacy that has long subsisted between attorney and client will not be hastily interrupted, and the mere force of habit will take the public along the old and well-known road; but there are some instances in which the exemption will probably be claimed. An ordinary question of right or liability, or a case

where the difficulty is involved in the construction of some written document, may be disposed of by counsel at once for a guinea.

An ordinary conveyance may perhaps be drawn by counsel, to whom the client will in person deliver the deeds, for six or seven guineas. The conduct of a case in court will be rarely undertaken by counsel without the intervention of an attorney, because the client will not be able to anticipate the exigencies of a trial, and will for the most part be unable to supply judicious instructions, and an error in this respect can scarcely ever be repaired; but undoubtedly in some cases, where the facts are simple, and the client can give instructions as well as the attorney, as for instance in criminal cases, where the whole brief for the defence generally consists solely of the depositions, accessible to any one for so much per folio, there the services of the attorney may be dispensed with.

The relaxation of the rule can only be effected by the Bar, and it is to be feared that, at the present moment, it will only be regarded as a forced concession, and not without reason. Learned gentlemen, who publicly lament "the decrease of business" in Westminster Hall, and its "relegation to the county courts," and would now abolish "Bar etiquette," because "a year has altered the state of *parties*, and the prospects of the Bar considerably," and as a measure of retaliation upon a few fraudulent attorneys, who have stolen from the Bar a compensation for their own losses, forbid us to hope that the measure will be regarded as an act of grace. But, assuming that the measure is virtually carried, let us calmly endeavour to estimate the effects which it will produce upon the Bar.

In the first place, let us observe that there is no danger of the result so strongly deprecated by Lord Campbell, in *Doe d. Bennett v. Hale* (15 Q. B.), that "the line of demarcation" between the two branches of the profession will be obliterated. The examples of foreign countries, where the functions of attorney and barrister are performed by the same person, if properly estimated, supply an argument against, rather than in favour of, such an anticipation. For in those instances, either the court entertains no oral debate, as in Russia, or the state of the people is incapable of maintaining the division of labour, as in Denmark or Newfoundland.¹ But in England, where every contest in the courts of law is maintained by public argument, with all the aids and the appliances of rhetoric, and where the involved complexity of the law, and the intricacy of rights and liabilities, require the sole and undivided labour of many a weary

¹ Report on Legal Education, 258.

year of patient and baffled thought, the barrister has ample occupation in his own sphere, and will not undertake the encumbrance of marshalling the details which are now so well, though too expensively, performed by the attorney. We think it more probable that the common law and equity practitioners will "intercommon" than that the barrister and attorney will become identified.

As for those miserable hangers-on of the Bar of whom so much dread is entertained that they will engross these duties, we say it with regret, we believe that there are "cheap barristers" capable of the dishonesty, but being driven to such expedients by sheer incompetency, they would be comparatively innoxious, and, under the more stringent discipline which we hope to see enforced, would soon be exterminated. It must not be forgotten that considerable patronage would still remain in the hands of the attornies, the magic influence of which would deter the Bar from invading their circle. But independently of mere motives of interest, our belief is founded upon the influence of the Bench, the high spirit of the Bar, and the precedent of "the olden time."

Among the many results, which it would be tedious to enumerate, we must mention the necessity that would arise for thorough legal education; the reasons for allowing that scheme to rest are supplied by etiquette, for it is said that the attornies are competent to select the best men; the public would not be; but let the Bar be so thoroughly trained that the ability of any man to undertake a sudden responsibility would be in some measure guaranteed, as in the case of surgeons and physicians, and even that paltry argument would fail. An individual would ascertain the man best adapted to advise upon his particular case, as a patient now selects his medical adviser.

It is anticipated by some that much briefless talent, which now gapes, "mute, inglorious," in the back-rows, having no connexion with "the well,"¹ would, by the personal confidence of private friends, emerge into notice, to the great advantage of the public. This is doubtful. Already the canvassing that takes place among the attornies, in behalf of almost every individual who comes to the Bar, is enormous; and, in addition to this, all men have occasional chances offered them by "devilling,"² or

¹ The lower part of the court in front of the counsel, devoted to the attornies.

² I. e. holding briefs for other men when engaged: many men have thus acquired practice: the substitute must be sufficiently competent to please the client, but not too competent, or he eclipses the original. The Attorney-General's "devil" is a junior en permanence, with independent briefs; ordinary devils are gratuitous.

they can make them by writing;¹ and, upon the whole, it is our conviction that the briefed and the briefless would maintain their relative positions. Those who are disposed to hope that men of more varied endowments and comprehensive intellect would be promoted by the general public, rather than the dry lawyers, forget the names of Murray and Talfourd.

We have no fear of the consequences of the present movement; and as far as the dignity of the Bar is concerned, that is based, and should for ever stand, upon the elements of sound learning and public usefulness.

D.

ART. V.—IS PARTNERSHIP *EN COMMANDITE* RECOGNIZED AND PERMITTED BY THE PRESENT LAW OF ENGLAND?

THERE is probably no proposition connected with our commercial law which would meet with so ready an assent as this, that where two persons are jointly interested in the profit and loss of a mercantile concern, they are partners in that concern, at least as to third persons, and liable as partners to make good the losses of the concern with their last shilling and their last acre, to third persons: whatever may be the private stipulations which regulate their liabilities *inter se*. It is generally received as a corollary from this proposition, or rather, as the same proposition embodied in another form, that partnerships *en commandite* (to use the well-known French term) are not permitted by our laws. And notwithstanding the title at the head of these observations, we do not intend to dispute the propositions enunciated above, in the terms in which we have enunciated them. But we conceive that by a modification of the terms, slight and immaterial to the parties entering into the arrangement, or we may say not at all depriving them of any of the advantages sought by the dormant partner joining such a concern, we can secure to the dormant partner the immense advantage of being involved in no risk beyond the extent of the capital which he may originally advance to the concern.

¹ It is reported of the late Mr. Boteler, of Lincoln's Inn, that merely advertising a book on tithes, procured him business connected with that subject; but that was before the revival of Horace's "*Scribimus indocti doctique*."

The rule concerning dormant partners is extremely strict. They are exposed to exactly the same liability as ostensible and active partners—although never holding themselves out as partners, never attracting any credit to the firm, never entering into or interfering with any contracts of the firm. A rule, which has been often assailed as inhuman and contrary to the interests of commerce—tending to damp speculation and to promote inertness—and as often (hitherto at any rate) upheld on the ground of being expedient, nay necessary, for the security of creditors, and affording to such partnerships, and especially to joint-stock partnerships, by the very boundlessness of liability which is complained of, and amount of credit and command of capital which they could not otherwise obtain.

It is not at all improbable, however, that this unbounded liability will at no distant period be subjected to restraint by statute. Already many instances have occurred—one, the Glamorganshire and Monmouthshire Bank, is even now affording a warning—to show that the unlimited liability, while it almost always operates, when called into action, with lamentable severity upon the dormant partners, actually fails to secure the repayment of twenty shillings in the pound to creditors; while by the false confidence which it inspires, unsound concerns are enabled to carry on long beyond the period at which they ought to have been wound up. Considerable agitation has from time to time shown itself in the commercial world to have the law (as it has been hitherto regarded) altered; isolated efforts have been already made in different branches of the legislature, and it is probable that those efforts will be renewed, with what success remains to be seen, during the present session of parliament.

But it is entirely beside our present purpose to point out the unreasonableness in theory, the inconveniences in practice, or the prospects of the continuance of the present law. Too many decisions stand in every volume of our law reports to hope for any refuge, save by parliamentary declaration, from unbounded liability for those individuals who, advancing money to a trading concern, stipulate for a share of the net profits instead of interest on their advance. They are partners, and must remain so; and, as partners, are liable with their last shilling and their last acre to all the creditors of the concern. But there are some limitations to this liability, to be gathered from many dicta, and even decisions of the courts, both of equity and of common law, during a very long series of years; containing the germ, and somewhat more than the germ, of a doc-

trine, which, though never acted on, we take to be indubitable and unassailable.

The principal, or one of the principal of these dicta and decisions, at any rate the most suggestive, and that which gave the first hint towards the arrangement which we are about to propose, is to be found in the case of *Exparte Hamper*, 17 Ves. 403. The particulars of that case are not material to the present inquiry, but in the course of the case Lord Eldon stated the rule in the following terms :

“ The cases have gone further to this nicety upon a distinction so thin, that I cannot state it as established upon due consideration ; that if a trader agrees to pay another person for his labour in the concern a sum of money even in proportion to the profits, equal to a certain share, that will not make him a partner : but if he has a specific interest in the profits themselves, as such, he is a partner.”—
p. 404.

And again, p. 412.

“ The ground as to third persons is this—it is clearly settled, though I regret it, that if a man stipulates that as the reward of his labour he shall have, not a specific interest in the business, but a given sum of money even in proportion to a given quantum of the profits, that will not make him a partner, but if he agrees for a part of the profits as such, giving him a right to an account, though having no property in the capital, he is, as to third persons, a partner : and in a question with third persons, no stipulation can protect him from loss.”

His lordship lays down the rule without any doubt, though with regret, which makes the force of the rule stronger ; for his regret would have induced him to lay down some other rule had it been possible. For what does the regret imply ? Simply that his lordship did not consider a limitation of liability expedient, but thought it would have been wiser to have kept as many persons as possible liable as partners. Yet he felt bound to lay down this rule. Another judge, a French judge for instance, whose education had led him to approve of partnerships with limited liability (*en commandite* in fact), would have laid down the rule gladly and sought to extend it. The regret or gladness of the judge can certainly not be taken into consideration, (except thus far) that a rule which Lord Eldon laid down with regret must certainly be true to the fullest extent in which he laid it down.

His lordship considers the distinction “ thin.” We are quite sure, since his lordship has laid it down, and with regret, that the distinction exists : and whether it be thin or not is of secondary importance. So far from being thin, however, it ap-

pears to us wide enough and strong enough to build a whole jurisprudence upon. The epithet is merely a dyslogistic expression, indicating his lordship's unwillingness to admit the rule : it is but another form of his regret.

If A. and Co. contract with B. that in consideration of certain services (we omit at present the discussion of what those services need to be), B. shall receive a certain (or rather an uncertain) reward proportioned to what the value of those services may eventually turn out to be—but that under no circumstances whatever shall B. have any right to the custody or possession, or any right of property in any portion of the effects or property of A. and Co.—and contract with C. that in consideration of certain services he shall have a right in preference to all the rest of the world (B. included) to the possession and custody of every portion of the effects and property of A. and Co.—are these two contractees, B. and C., in the same position ? Is the distinction between them thin ? If A. and Co. contract with B. that at the end of the year he shall receive from them a sum of money to be then ascertained ; that he shall at that time stand a creditor of theirs for that sum ; and contract with C. that at the end of the year he shall be entitled to a portion of the profits of the concern, in specie, wherever they may happen to be and in whosoever hands—that C. shall have the right to give by himself a sufficient receipt and discharge to the holder—nay, that at every instant throughout the year C. shall have the right to take into his own possession every portion of the earnings of the concern in whosoever hands they may be (always excepting the proper hands of A. and Co. themselves)—will it be alleged that the distinction is but “thin” between B.’s contract and C.’s ? B. contracts to be a creditor of the concern ; C. to be a partner. Shall it be said that this will not be permitted ? Many persons, in commenting on this case of *Exparte Hamper*, treat it as if it were a mere attempt at verbal refinement to talk of a man being “interested in the profits, as such”—“in the profits themselves as profits ;”—can a man, they ask, be interested in the profits otherwise than as profits ? The ambiguity lies in the word “interested.” A man who agrees for a share of the profits is directly interested in the profits themselves, in specie, wherever they may be, and as soon as they accrue. The law (with a view of advancing and protecting the interests of commerce) gives to every man who has a right to a share in profits, a right to take possession of the whole profits wherever he may find them. But the man who, in Lord Eldon’s words, contracts for a sum of money, even in proportion to a quantum of the profits, is not, properly speaking, or in the same sense,

interested in the profits. He is only interested in the *rate of profits*. "Interested" in the one case means "having a right of property in the profits"—in the other "concerned to know what the profits are." Neither has the person who stipulates for a sum of money even in proportion to a quantum of the profits any right to an account; but only to a discovery. The right to an account involves the idea of relief. In fact, an account without other relief is simple discovery. But a person who is specifically interested in the profits, i. e. who has a right of property in the profits in specie, has a right to an account properly so called: not only to a discovery, but to a decree for payment over. The interest in the rate of profit therefore does not bring such a person within Lord Eldon's rule as having a right to an account.

The principal cases upon which Lord Eldon relied, as establishing the rule in *Ex parte Hamper*, were probably *Waugh v. Carver*, 2 H. Bl. 235, and especially *Grace v. Smith*, 2 W. Bl. 998. In the latter of these two cases, Smith had been in partnership with Robinson, but had retired, leaving his whole capital in the concern, as a debt, with interest at five per cent., and an annuity of 300*l.*, for all which he took a bond from Robinson. Robinson became bankrupt, and then Grace, a creditor of Robinson, sought to charge Smith as a secret partner under that bond. The judgment of De Grey, C. J., in deciding against the partnership, is not long, and is so important for our whole argument that we transcribe it.

"The only question is, what constitutes a secret partner? Every man who has a share of the profits of trade ought also to bear his share of the loss. And if any one takes part of the profits, he takes a part of that fund on which the creditor of the trader relies for his payment. If any one advances or lends money to a trader, it is only lent on his general personal security. It is no specific lien upon the profits of the trade, and yet the lender is generally interested in those profits: he relies on them for repayment. And there is no difference whether that money be lent *de novo*, or left behind in trade by one of the partners who retires. And whether the terms of that loan be kind or harsh makes also no manner of difference. I think the true criterion is, to inquire whether Smith agreed to share the profits of the trade with Robinson, or whether he only relied on those profits as a fund of payment; a distinction not more nice than usually occurs in questions of trade or usury. The jury have said this is not payable out of the profits, and I think there is no foundation for granting a new trial."

The consideration of these cases has suggested the plan of borrowing money on debentures or bonds, conditioned for the payment of periodical payments, by way of interest on the loan, proportional to the dividend declared among the partners on the

capital stock; and the following form has been proposed accordingly. It may be observed that, although these observations are addressed to the case of a joint-stock company, being the case where the suggestion was made, the principle is nearly the same with regard to all partnerships. The case of private partnerships is in some respects more favourable to the exemption from liability, owing to the considerations which will be pointed out hereafter.

Date, 1 March, 1852.

£50. No. —.

S. G. Co.

CONVERTIBLE BOND.

1 March, 1852.

No. —. £50.

We, the S. G. Co., in consideration of the sum of £50 to us in hand paid by A. B. of do bind ourselves and our successors unto the said A. B., his executors, administrators and assigns, in the penal sum of £100.

The condition of the above written obligation is such, that if the said company shall pay to the said A. B., his executors, administrators or assigns, at the office of the company, within one week after every general meeting of the company, such a sum of money by way of interest on the said sum of £50, as shall be after the same rate per cent. as the dividend which shall at such general meeting have been declared on the paid up share capital of the company; OR ELSE (at the option of the company) if the said company shall, at the office of the company, and on the 1st day of September which shall be in the year 1852, pay to the said A. B., his executors, administrators or assigns, the sum of £50, together with interest thereon after the rate of £5 per centum per annum: then the above written obligation is to be void, otherwise to remain in full force and virtue. Given under our common seal, this 1st day of March, 1852.

(To be endorsed on the above.)

1. This obligation will be renewed as the coupons are exhausted.
2. The proprietor of this obligation is entitled at any time to require it to be converted into a share or shares at par.
3. By the deed of settlement the directors are from time to time, previous to every general meeting, to certify what portion (if any) of the profits of the company are proper to be applicable to the purposes of a dividend, after making provision for a rest or reserved fund (if deemed expedient).
4. The directors are entitled at any time, on three months notice, to pay off the proprietor of this obligation at par (i. e. on payment of £50 and all interest at 5 per cent.), unless such proprietor, within one month after sending such notice, elect to convert this obligation into shares at par, and to become a shareholder to that amount.
5. The proprietor of this obligation will be permitted to attend all meetings of the company.

In addition to these endorsements there might be added a clause in the words of Lord Eldon, in *Ex parte Langdale* (post,

p. 65), to the effect that the bondholder shall not have any claim upon the profits, or the application of them, beyond the claim of an ordinary creditor.

This instrument, it will be seen, was prepared with a view to its being issued by a joint-stock company, under the act 7 & 8 Vict. c. 110. The principle is the same when issued by a private partnership; a few verbal alterations would be proper, which we shall not now discuss.

It is submitted that no partnership can be created except in one of three ways, viz. either (1) by express present contract, to be a partner; or (2) by the necessary implication which the law itself fixes upon some contract entered into with the trader (e. g. to be jointly interested in the profits and losses of the concern); or else (3) (without any contract) by holding one's self out to the world as a partner. The first and third heads we may dismiss. There certainly is no agreement to be a present partner, since that is the very thing sought to be avoided; nor is there any holding one's self out to the world as a partner. It remains to be seen whether a person advancing money on the terms in the above bond would be held to be within the second head, as having entered into a contract to be jointly interested in the profit and loss.

Now, the apparent right which any person holding such a bond has against the concern, is that of a creditor for an amount as yet unascertained, but ascertainable at some future period. As soon as the dividend is declared the rate of interest is known, and the total amount due for interest may be immediately calculated. The bondholder that instant stands like any other specialty creditor against the concern for that amount. He cannot (not having agreed for any interest, i. e. right of property, in the profits,) touch the profits or any part of them. If the company or firm refuse to satisfy his demand, he cannot seize the profits of himself; he can only put his bond in force. If he had contracted for a share or portion of, or interest in, the profits themselves in specie, the law would have given him, as incident to such a contract, the right to the custody and possession of every part of the profits, wherever they might be; and his receipt alone, without the concurrence of his partners, would have been a sufficient discharge for the whole. The exercise of such a right might manifestly be most prejudicial to all other persons having claims on the concern; and the law therefore has determined, that any person who possesses such a right shall be liable as a partner to the general creditors, whether he has exercised the right or not. It is a preference for which he is not justified in contracting, unless on the terms of incurring an equivalent

liability. These bondholders contract for no such preference; why should they be held to any such liability? which is imposed, be it remarked, confessedly only in reference to the undue advantage a dormant partner would otherwise possess.

But then it is said that this arrangement, although disguised, is in fact merely an agreement to take a share at some future time, and to have the profits in the mean time. We deny emphatically both these assertions. It is no agreement for the profits in the meantime: it is an agreement for a very different thing. It is an agreement to become a creditor for a sum of money, to be ascertained by reference to the periodical rate of profit, which is clearly more than a difference of words. And, if it were a mere difference in words, we contend that it is not on that ground alone to be disregarded—as Mr. Collyer very justly observes, though without making the same use of the observation as is now sought to be made. And in the next place, even if this were an agreement to take a share at a future time, that will not make the contracting party liable as a present partner. In *Gabriel v. Evill* (Car. & Marshman, 360), Lord Abinger, C.B., at Nisi Prius, observed, that in one case (in which his lordship seems to have been engaged) “Lord Rosslyn, in equity, and afterwards Thompson, B., and a special jury at law, held, that a mere advance of money on a prospective copartnership, in contemplation of a partnership not finally agreed upon, did not make a partner the person who advanced the money.” And his lordship, in his charge to the jury, likewise relied on the fact that nowhere in the books of the firm was Evill treated as a partner (and neither, of course, would these bondholders be in any manner treated as partners). And, accordingly, the defendant, who was sought to be charged as a partner, was held not liable; and a rule for a new trial, on the ground of misdirection, was, after argument, refused (S. C. 9 Mee. & W. 297). This decision alone would very nearly cover the case of these bondholders; but they stand much higher, for they do not in fact even agree to become partners. The stipulation, that they may become partners if they choose, is no agreement—there is no mutuality. Not that an agreement for a partnership is such a contract as would be specifically enforced in equity, any more than an agreement for a marriage; though damages might be obtained for the breach of it: but will anybody say that these bondholders could be charged with damages in case they refused to take shares?

The highest ground upon which this sort of objection can be put is, that the company and these bondholders are somewhat in the position of trustee and cestui que trust: the cestui que

trust having the full benefit and advantage of all the profits made, with a right to call for a conveyance of the legal estate at any time, and the trustee being clothed with the legal estate and legal liabilities. But, suppose such a position accurately to represent that of the present parties;—it leaves these bondholders precisely where they desire to be. The trustee can never call upon the cestui que trust to accept from him a conveyance of the legal estate. It may well be doubted whether, unless by special stipulation, he is even entitled to indemnity for losses and risks to which his being vested with the legal estate may expose him, further than to the extent of the trust fund: or whether the cestui que trust is personally liable to make good to him his losses. But these bondholders and the company do not stand in any such position. The relation of trustee and cestui que trust requires some definite specific subject-matter. What particular object or thing can be pointed out of which the company is a trustee? There is no such relation existing: the bondholder is a mere creditor—the company a mere debtor.

The objection which has generally been first made to this plan is, that Lord Eldon's rule, in *Ex parte Hamper*, is expressly confined to the single contract for labour: that he does not extend it to contracts for the loan of money: that there is no decided case in which such a rule has been held to extend to the case of money advanced on a rate of interest varying with the profits: and that every decided case, which exempts from liability a person taking an interest proportioned to the profits, has been in the case of clerks, agents, factors and such like, sailors in the whale fishery, and other instances, where the peculiar or inferior station in life and line of action of the person so remunerated has precluded the notion of partnership: that there is no case where a person in fact advancing capital, for a remuneration varying with the profits, has been held exempted. It is admitted that no case has been found exactly on all-fours with this. But there are several, one in particular—which shall presently be adverted to (*Ex parte Langdale*, 18 Ves. 300)—which seem to involve the whole principle now contended for. And it is not true that Lord Eldon expressly limited the rule to the case of labour. He only laid it down in the case of labour: he does not say that the rule is not equally true when such a remuneration is granted upon other considerations; except, indeed, so far as *expressio unius exclusio sit alterius*. At any rate, there is no decision the other way. Assuming the point, as regards persons contributing capital for such a consideration, to be entirely new, the cases where brokers, agents, &c., are held to be no partners, go a great deal further than we wish to go at present. In fact, there are decisions upon decisions in cases of labour, &c., which

go far beyond the rule as laid down by Lord Eldon in *Ex parte Hamper*. In *Hesketh v. Blanchard*, 4 Exch. 144; *Benjamin v. Porteus*, 2 H. Bl. 590; *Mair v. Glennie*, 4 M. & S. (sed qu.), and many other cases founded on them, brokers or agents were held not to be partners, although the terms of the agreement professed to give them a right of property in the profits themselves, *in specie*: from whence would flow rights to demand an account of the whole transactions of the concern, the disposition and investment of every portion of the materials traded with and the profits accruing, as well as a right to take the profits themselves. And the only distinction (we will not call it a difference) between these cases and the case before us is, that they were all in the case of labour, or connection, and this is the case of money advanced to the concern. Here, these bondholders, as it cannot be too frequently insisted, have, and pretend and attempt to have, no right of property in the profits made, nor any specific lien on them, nor any control over the management of the concern in making profits, nor over the investment or application of the profits when made.

Now the reason why brokers, agents, factors, &c., are thus held not to be partners, though in a stronger case than ours (i. e. even in a case where they have contracted for a share of the profits themselves), is because the circumstances of the contract show that not to have been the intention of the parties. The nonliability is never stated as inherent to any particular situation in life, but that situation in life is only referred to as tending to show that the intention of the parties could not have been to establish a co-partnership. But can there be any contract from which the intention of the parties not to effectuate an immediate co-partnership can appear more strongly than from this document? in which the parties stipulate that one party shall have the option at a future period of becoming a partner. To what end, if he intended to be a partner immediately? And indeed the whole contrivance is suggested by the anxiety not to create a partnership; which anxiety is certainly successful, so far at least as regards a partnership *inter se*; and this presumptive intention or anxiety to avoid creating a partnership *inter se* is sufficient in the case of brokers, labourers, &c., to prevent a partnership as to third persons. The decisions put it upon no other ground, than that a partnership could not possibly have been meant by the parties themselves, and therefore shall not be implied even in favour of third persons, unless some special circumstances, such as holding one's self out as a partner, &c., occur.¹

¹ *Price v. Austin*; *Baxter v. Rodman*; quoted in the notes to *Story, Partnership*, § 42, p. 63, n. 1 and 2, edit. 1841.

Now what more ground is there for fixing as a partner a person who for a variable remuneration advances capital or goods, or stock to a concern, than one who advances labour, or connection and influence as a commission agent. All these things are money or money's worth. Lord Eldon lays down the rule in the case of an agent, which was the case before him: there does not appear any *à priori* reason why the rule should not be laid down generally, even if authority were wanting. But there is abundance of authority for our extending it to the case of capital; we find Lord Eldon himself, in *Ex parte Langdale* (18 Ves. 301), which will be more particularly mentioned presently, acting on precisely a similar rule with regard to goods supplied to a trader; and goods certainly cannot be distinguished from money. And in *Pott v. Eyton* (3 C. B. 32, see p. 40), Tindal, C. J., expressly states and approves of *Ex parte Hamper*, *Ex parte Langdale*, and *Ex parte Watson*, and applying them to the question in *Pott v. Eyton*, which arose in consequence of Eyton having contracted for a per centage on Jones's sales (which was, however, a per centage at *all* sales), his lordship says that such a per centage, in consideration of the influence which it was expected Eyton might exercise over the workmen using Jones's shop, was not sufficient to make Eyton a partner; adding that "it made no difference whether the money is received by way of interest on money lent, or wages or salary as agent or commission on sales." And in that case, the defendant was held no partner, though he actually had had his name up over Jones's shop within six years; but the plaintiff never knew it, and therefore had not reposed any special credit on him. And Lord Lyndhurst in *Besch v. Frölich* (1 Ph. 174), expressly places on an equal footing the three considerations which exist between partners: viz., labour, capital and good will. Perhaps no stranger, dealing with a whale-fishery firm, would mistake a common sailor on a Greenland voyage for a partner, or give credit to the partnership on his account, so as to charge him with the liabilities of the whole firm.¹ But an agent or a factor, perhaps carrying on the entire management of a concern on such an understanding, very obviously may be mistaken for a partner, and cause at any rate much more room for doubt than the case of one of these bondholders, who never hold themselves out as partners, nor act in any manner so as to induce credit to be given to the concern.

The case of *Bloxam v. Fourdrinier* (usually cited as reported 2 W. Bl. 999) comes near the present case, and appears at first sight more than enough to set all this argument to one side;

¹ See the expressions of Lord Ellenborough in *Mair v. Glennie*, 4 Mau. & Sel. 240.

but it is clearly imperfectly reported. In that case, Pell, the retiring partner, agreed to leave his share in the concern, estimated at 2485*l.*, as a debt, with interest at 5 per cent.; and *in lieu of all profits* (as reported) was to have an annuity of 200*l.* for six years if he should so long live. What was this arrangement but an agreement by the continuing partner to pay 1200*l.* by six annual instalments, as a consideration for Pell's giving up his share in the business? with the further consideration that the 2485*l.* was not to be withdrawn immediately; and further, that if Pell died, no further instalment of the 1200*l.* should be paid. Yet Lord Mansfield is reported to have said that this was either a partnership or *usury* in Pell; that he could not be heard to say it was *usury*, and therefore must remain fixed as a partner. If the report be correct, it was a very simple case of a sale by a retiring partner. But on referring to the report itself of the case, it turns out to be no report, but a statement by counsel in the argument in *Grace v. Smith*, of a case alleged to have occurred at Nisi Prius before Lord Mansfield. Moreover, *Bloxam v. Fourdrinier*, though not expressly disapproved by the judges, was unceremoniously departed from, not to say overruled, in the very case of *Grace v. Smith*, where it was cited by counsel. In *Waugh v. Carver* (2 H. Bl. 235), Eyre, C. J., expressly dissents from a hypothetical case exactly similar to it. Mr. J. Story condemns it with unusual vehemence (*Story, Partnership*, 668, n.); and it certainly cannot be taken as of equal authority with *Ex parte Hamper*, *Ex parte Langdale*, &c. And besides, if it were every point correct, these bondholders could avoid the dilemma stated to have been proposed by Lord Mansfield. They certainly are not guilty of *usury*, and therefore may occupy the ground which Pell was not allowed to stand on.

But then, it is argued, these bondholders have a peculiar interest in the profits, for they have nothing else to go upon; for if there are no profits, they are to receive nothing; and if they are to receive anything, it is palpable, that they are to be paid out of the profits. We presume that even those who urge this objection will admit on second thoughts that it is simply begging the question. The contract itself certainly is not that they are to be paid out of the profits; and if they had occasion to put their bond in force, they surely might take satisfaction out of any part of the effects of the company, capital or profits. Even if these bondholders were to go against the profits, they could not do so otherwise than, or preferably to, any other creditor. Every creditor has the same kind of interest in the capital and profits of the concern as these bondholders; and according to that rule, every creditor would be a partner. But the words of

De Grey, C. J., in *Grace v. Smith*, seem exactly intended for this objection. "The criterion is, whether S. agreed to share a profits with R., or whether he only relied on those profits as a fund of payment. If any man lend money to a trader, it is lent on his general personal security. It is no specific lien on the profits of the trade, and yet the lender generally is interested in those profits; he relies on them as a fund for repayment; and there is no difference whether the money be lent *de novo* or left behind by a partner who retires."

If we take the case of an ordinary debenture holder, taking five per cent. per annum, this he takes whether the concern makes profits or not, and if it do not, then he takes it out of the corpus or capital stock. But if there are no profits, these bondholders cannot diminish the corpus. A debenture holder, therefore, who stipulates for five per cent., profits or no profits, interferes more with the security of general trading creditors than do these bondholders; à multo fortiori, therefore, the argument of De Grey, C. J., holds in *Grace v. Smith*, who puts the distinction on the ground that a partner can take the profits when made, and so diminish the funds to which the creditors may have recourse; whereas these bondholders cannot lay hold of the profits by any means which are not equally open to all creditors; and if there are no profits declared, cannot lay hold of the capital stock, which is open to general creditors, by any means whatever.

We may here observe, that the reasoning in *Grace v. Smith* is not, as might at first sight appear, condemned by Story (*Partnership*, § 36, n. (2)), because it exempts one class from liability, but because it does not exempt both, i. e. those who share the profits themselves, as well as those who agree for a sum proportioned to the profits. Story's inclination clearly appears in § 60 (*Partnership*, edit. 2).

But then it is said that this reasoning, founded on Lord De Grey's observations in *Grace v. Smith*, however applicable to the members of a private partnership, does not apply to the case of a joint-stock company. No individual shareholder is permitted to lay his hand on any portion of the profits themselves any more than one of those bondholders. Lord De Grey's reasoning, therefore, would, in the case of joint-stock companies, prove too much; it would exempt an ordinary shareholder from liability quite as much as one of these bondholders. In answer to this objection, it may be observed, that the stat. 7 & 8 Vict. c. 110, by s. 27, restrains the shareholders from acting in their own behalf otherwise than by directors, and so restrains the ordinary right of partners to take possession of the profits wherever they may be found. But the act

does not affect the beneficial interest which shareholders, as partners in the concern, have in those profits. They must act by the instrumentality of directors, who thus are constituted the trustees of the shareholders: but they continue beneficially interested, just as much as they would in case the power of direct action ordinarily possessed by partners had not been taken away. They would have a remedy in equity for any misapplication or nonapplication of these profits. But these bondholders are not in anywise specifically interested in the profits, more than in any other property of the company, beyond knowing their amount. They have no lien on them—no right to say one word against the company applying them in any manner whatsoever. The shareholder (a partner) has annexed to his position a right to call the managing partners to account, not only for the profits but for the stock, and the management of it; to account why no larger profits have been made; and to state and give reasons for every particular investment. Very different is the account to which these bondholders are entitled. It only amounts to this—to an account of what profits have been made during the preceding term; nay, not near so much—only to an account of what portion has been certified to be applicable to the purposes of a dividend, and of the number and amount of shareholders, so as to get at the proper rate of dividend declared; and this, as has been before observed, is properly no account at all, but only a discovery. If the company choose to lock up all their profits, to increase their reserve fund, or increase their capital or trading stock, these bondholders must submit. Nor have they any exclusive or preferable claim or lien upon even such portion of profits as may be thus certified as applicable. The rate of dividend being ascertained, the rate, and consequently the amount of interest due on these bonds, is known, and the bondholder is immediately a creditor of the company to that extent, and exactly able to enforce that demand against the company by the same means as any other creditor, i. e. either the amount of interest or his debt with interest. Where is there any special charge of this demand, whatever it may be, upon the profits of the concern? And even if these bondholders were to agree to look only to the profits as a fund of repayment, the words in the judgment of *Grace v. Smith*, quoted ante, would perhaps seem to justify even that. But, in fact, the demand of the bondholder is to be regulated or ascertained by reference to the profits or rate of dividend for the preceding period. When ascertained, it may be recovered out of any of the assets of the company, capital or otherwise. How *can* this constitute the creditor a partner? He

is not specifically interested either as owner, or as having any peculiar lien either in the capital or the stock, or the gross profits, or the net profits. Interested he is, as every creditor is, that the concern, which has promised to pay him money, should thrive; but further than this we cannot see what interest he has.

Mr. J. Story's own views sufficiently appear by § 48:—"As a matter unaffected by decisions, and to be reasoned out upon original principles, it might well be doubted whether, where each party is to take a share of the profits indefinitely, and is to bear an equal proportion of the losses, each having an equal right to act as a principal as to the profits, although the capital stock might belong to one only, whether that should constitute, as to third parties, a case of partnership." The case, it will be observed, which Story here supposes, is much stronger than that we propose; he gives each party a right to a share of the profits, and a right to act as a principal as to the profits, and yet thinks that ought to be held no partnership if there were no decision the other way; à multo fortiori, then, are these bondholders, in the absence of any adverse decision, to be held exempt.

The verge, beyond which third persons cannot step in endeavouring to fix as partners parties who act under a contract of this description, cannot be better laid down than by Kent (Ch.) in 3 Comm., quoted approvingly by Story, Partnership, § 49: "To be a partner, one must have such an interest in the profits as will give him a right to an account, and a specific lien or preference in payment over other creditors. There is a distinction between a stipulation for labour¹ proportioned to the profits, which does not make a person a partner, and a stipulation for an interest in those profits, which entitles the party to an account as a partner." This is it; the account must be for the profits; for the management, amount, and finally *for the payment over*, of the profits, or for a receiver and injunction; that is, the account and relief to which a partner is entitled. These bondholders have a right to an account and a relief of a very different extent from that.

Collyer expresses the result of the authorities in a different way, but equally favourable to the view here taken. He says, p. 17, "The interest in the profits *must be mutual*; that is, each person must have a specific interest in the profits [by which we suppose he means, a right of property to the profits in specie,] as a principal trader." How can these bondholders be brought within these words?

Collyer, however, afterwards rightly states (p. 23), that Lord

¹ And why might it not be added, "or for any other service?"

Eldon's dicta, which have always been approved, and (p. 24) have become the foundation of various decisions since made, "consider the words of the agreement in reference to the profits, *and not the actual situation of the parties*, to be the criterion of partnership in these cases;" and then he refers to *Ex parte Hamper*, upon which we chiefly rely. The expressions in that case, indeed, scarcely warrant Mr. Collyer's words, "without reference to the actual situation of the parties," for Lord Eldon confines himself to the case of *reward of labour*. But it has been shown that labour, capital and connection are, on principle and authority, co-equal. Lord Eldon does not state the rule as true in the case of labour and false in other cases; and he afterwards applied a similar rule to a person advancing stock, in *Ex parte Langdale*, 18 Ves. 300, in which case are perhaps to be found the most favourable dicta for these bondholders; dicta which very nearly, if not completely, embrace the whole principle now contended for. There, it was attempted to establish a partnership between the bankrupt and a brewing firm, who had provided the bankrupt with beer on certain terms, having reference to profits; but what the terms of the contract were, were in dispute. Lord Eldon directed an issue, saying, after stating the different and contradictory representations of the nature of the contract, "If the actual contract gave a claim on the profits or the application of them, that is a partnership. *If there was no claim on the profits or the application of them, then it is not a partnership.*"—p. 301. It certainly can make no difference whether it be money or goods which is supplied. In *Ex parte Langdale*, the brewers had supplied beer for a recompense, to be settled by reference to the profits. Here, the bondholders supply money; but they put forward no claim on the profits, nor on the application of them.

We shall conclude with observing, that (at first sight) subtle distinctions in the wording of instruments make the greatest possible difference in their effect, as in the common case of a condition not to assign, and a limitation until assignment or bankruptcy, and then over. For it is no explanation, it is merely stating the proposition in different words, to allege the reason that where a gift is limited to a man in fee, without more, he takes it with all incidents; that one of the necessary incidents is a power of alienation, and that a condition against alienation is contrariant and therefore void; whereas if an estate be limited to a man *until* he alien, and then over, there is nothing contrariant, but on the contrary it is the proper consequence of such a gift that the donee should have no power of alienation. This we say is not following or explaining the differ-

ence itself, but only stating the ground on which it is established. It is just as hard as ever to see why such ground should be taken. The difference in the two modes of expression is merely verbal, yet the one is valid and the other disregarded. But in the present case we have shown that there is a substantial difference between the contracts; that the one is a contract for a share or portion of the profits themselves, and the other is a contract for a sum equal to that portion. The first contract gives a preferable title to seize the profits or any portion of them, more readily than any creditor; a right, the exercise of which may defeat the claims of creditors. The second gives no such right. The first gives a right to an account properly so termed, including relief; the second to discovery merely. The first contract is for a partnership, the second for a debt. The distinction is fully and repeatedly admitted by Lord Eldon in the cases cited from 17 Ves. 404, 18 Ves. 301, 19 Ves. 241, and repeatedly adopted and acted on by subsequent judges, in the case of labour or connection. It has been shown that no substantial difference on principle can be taken between labour or connection, and capital. They are all money or money's worth. And authority is not wanting to establish a proposition which seems to be obvious of itself. In *Besch v. Frolich*, and *Pott v. Eyton*, the equality of labour, goodwill and capital, was expressly laid down by the judge: and in *Grace v. Smith*, *Waugh v. Carver*, and *Exparte Langdale*, there is abundant authority to support our view; and we therefore confidently submit that such an arrangement as has been suggested will not involve the bondholder in the liabilities of the concern, and that it secures to the person advancing capital all the advantages which could be obtained from a partnership en commandite.

B.

ART. VI.—FORMS OF INDICTMENTS UNDER LORD CAMPBELL'S ACT—14 & 15 VICT. c. 100.

THIS most useful act of parliament, as every one knows, was designed to simplify the forms of indictment, and so to adapt them to the different classes and grades of crime as to assist justice without prejudicing the accused.

Mr. Greaves, Q.C., has published this and other acts,¹ with

¹ Lord Campbell's Act for [the] further Improving the Administration of Justice, &c. with Notes, Observations, and Indictments. Late Wm. Benning & Co., London. 1851.

his own notes and comments, and forms of indictment. Mr. Greaves's long experience and useful works in criminal jurisprudence entitle his opinion to great attention, and we are glad to find that he ranks among the most far-advanced of our prudent law reformers. He says that it is his "strong opinion that these statutes do not by any means go to the extent they ought," and that he anticipates "still larger and more comprehensive measures of a similar character." Mr. Greaves lays down these two principles, on which his approval of such reforms is based. First, that it is right, in matters not evidenced in writing, that variances should be easily amended; and secondly, that "indictments ought to be in the plainest and simplest form."

As regards the first of these principles, it would be, perhaps, sufficiently carried out by simply striking out of the first section the mention of any specific matters in which the amendment may be made, and by simply leaving the power to do so at the discretion of the court, as is now stated, "if it shall consider such variance not material to the merits of the case, and that the defendant cannot be prejudiced thereby in his defence on such merits." This quite sufficiently limits the power. If courts cannot be trusted to apply so plain a principle, they are not fit to try offences at all. To particularize matters of amendment is unnecessarily to limit the power of amending. "*Expressio unius est exclusio alterius*," and it would not be competent for the court to amend anything not specified. Now if everything which is not material to the merits be not specified, the omissions are wrong and against the spirit of the enactment, and are mischievous. If, on the contrary, everything which can be immaterial to the merits is particularized, the statement of them effects no more than the general principle above stated, and is useless. The same remark applies equally to the 24th section, which begins by stating that "no indictment for any offence shall be held insufficient for want of the averment of any matter *unnecessary to be proved*, nor for the omission of the words "as appears by the record," or of the words "with force and arms," &c. Why specify these fossil relics of a verbose age? Can anything be more palpable than that such are "unnecessary to be proved?" These remarks do not, however, extend to cases where a doubt might rationally exist, such as whether it be necessary to allege the value of goods stolen, and the amount and kind of coins stolen, or to the mention of the person defrauded in cases of false pretence; and for these *et similia* there are, as there should be, distinct sections.

It is, however, chiefly as to the simplifying of indictments that we purpose applying ourselves, and also to carry out as

practically as we can the principle that indictments should be "in the plainest and simplest form." They are scarcely so in Mr. Greaves's forms, and it seems desirable to give the fullest possible effect the act admits of, to a principle not carried far enough according to Mr. Greaves's own view. The bill, *ex gr.*, he tells us, as it originally stood, contained a clause making every indictment good which charged an offence in the words of the statute, which is the case now after verdict, under 7 Geo. IV. c. 64, s. 21. The chief object of an indictment is to specify the charge *in such precise terms*, that the jury may know exactly the charge they have to try, and the court may strictly confine their attention to such charge. Adopting this rule as closely as the terms and spirit of the act permit, we purpose giving the simplest and plainest forms consistent therewith.

1. SIMPLE LARCENY.

Durham, to wit. The jurors of our lady the Queen upon their oath present, that A. B., on the fifth day of March, in the year of our Lord one thousand eight hundred and fifty-two, did feloniously steal a gold watch of the goods and chattels of C. D.

It is obvious, that by the express terms of the 24th section, the words "with force, and against the peace, &c." are now obsolete. With regard to the venue, the case appears to us to be similar. The section says, that no indictment shall be held insufficient "for want of a *proper or perfect* venue," and no venue *in the body of the indictment* is any longer required. (s. 23). Nor need the time be stated, where time is not of the essence of the offence (s. 24). This, however, is going too far, and we have accordingly retained the day of the offence; for it *may* be material where there were separate takings, according to sect. 17; and indeed if there be any averment more essential than another, next to the mention of the offence itself, it is probably that of the time; for without the thefts take place within six months of each other there would be no power to try them at all. Moreover, the time is one of the facts which tend to specify the offence which the accused is called on to answer.

2. FALSE PRETENCES (S. 8).

Hereford, to wit. The jurors of our lady the Queen upon their oath present, that J. B., on the third day of May, A. D. 1852, at the parish of Mordiford, in the county of Hereford, unlawfully and knowingly did falsely pretend to one P. V. that he, the said J. B., was sent to the said P. V. by one L. M., being a customer of the said P. V., for six yards of muslin, by means of which false pretence the said J. B. did then and there unlaw-

fully obtain the said six yards of muslin, of the goods and chattels of the said P. V., with intent to defraud: whereas in truth the said J. B. was not sent to the said P. V. by the said L. M. for the said muslin, or any other article whatsoever.

It is no longer necessary to say whom it was intended to defraud (see s. 8). A good deal of useless verbiage is omitted in this form, but nothing that can be deemed material. The moral homily about evil example and the devil, and the loyal indignation at the discomfiture of the peace of our lady the queen, her crown and dignity, by wicked J. B., we have also ventured to abscind.

3. STEALING MONEY (S. 18).

Kent, to wit. The jurors, &c., that on the tenth day of May, A.D. 1853, one A. B., at the parish, &c., did feloniously steal a certain sum of money, to wit, to the amount of seven pounds, the property of one C. D.

Whether the money consist of bank notes or cash it can be equally so described simply as money, nor is it at all material to specify the amount, or, having done so, to prove it.

4. EMBEZZLEMENT (S. 18).

Surrey, to wit. The jurors, &c., that one A. B., on the &c., at the parish of, &c., being a servant [*or clerk*], then employed in that capacity by one D. L., did then and there in virtue thereof receive a certain sum of money, to wit, to the amount of eight pounds, for and on the account of the said D. L., and the said money did feloniously embezzle, against the form of the statute in that case made and provided.

No count for larceny need be added, as sect. 13 provides, that if the offence does not prove to have been embezzlement, the prisoner may be found guilty of simple larceny under this indictment.

5. MURDER (S. 4).

Devon, to wit. The jurors, &c., that J. B., on the day of, &c., did feloniously, wilfully, and of his malice aforethought, kill and murder one M. S.

This form is framed according to sect. 4, one of the greatest improvements in the act. It ought to be rigidly adhered to. In the first place, it is no longer necessary to allege the instrument or cause of death; and we can never again see public justice so disgracefully defeated as in the case of *Reg. v. Thompson* (1 Mood. C. C. 139), where the indictment alleged that the deceased died from blows, whereas it appeared that he died from the fall on the ground caused by the blows, and an acquittal ensued from the variance!

6. MANSLAUGHTER (S. 4).

Cornwall, to wit. The jurors, &c., that L. Q., on the day
of &c., did feloniously kill and slay A. B.

7. PERJURY (S. 20).

Gloucestershire, to wit. The jurors, &c., that heretofore, to wit, at the assizes holden for the county of Gloucester, on the 10th day of July, A.D. 1853, before Sir Thomas Talfourd, one of the justices of our lady the Queen, a certain issue between one J. L. and one J. W., in a certain plea of trespass and assault was tried, upon which trial E. K. appeared as a witness for and on behalf of the said J. L., and was then and there duly sworn and took his oath upon the Holy Gospel, before the said Sir Thomas Talfourd, and did then and there, upon his oath aforesaid, falsely, wilfully and corruptly depose and swear in substance, and to the effect following, that he saw the said J. W. strike the said J. L. on the day of, &c., at Newnham, in the said county, which facts were material to the said issue, whereas in truth and in fact the said E. K. did not see the said J. W. strike the said J. L. in manner and form aforesaid, and did thereby commit wilful and corrupt perjury.

8. SUBORNATION OF PERJURY (S. 21).

Copy the foregoing, and then add as follows:] and the jurors further present, that before the committing of the said offence by the said E. K., to wit, on the first day of June, A.D. 1853, X. Q. unlawfully, wilfully and corruptly did cause and procure the said E. K. to do and commit the said offence, in manner and form aforesaid.

These forms entirely comply with the new act. It is no longer necessary to set out the jurisdiction of the person who administered the oath; and a number of little absurdities, which formerly trimmed and fringed these indictments, are usefully swept away in sect. 24, which we here recapitulate.

- | | |
|--|--|
| 1. Anything unnecessary to be proved. | 6. Stating his addition. |
| 2. "As appears by the record." | 7. Venue or local description in body of indictment. |
| 3. "With force and arms." | 8. Value or price of thing stolen, &c., or damaged. |
| 4. "Against the form of the statute," instead of "statutes." | 9. Time when offence occurred, when not material to the issue (?). |
| 5. Formal commencement or conclusion of indictments. | |

We believe that we have given all the forms which are rendered at all necessary by this act.

Although this is a most useful and laudable act, there is a great deal of redundant verbiage in it.

The 9th section, for example, provides, that if a man be tried

for any felony or misdemeanor, the jury may acquit of the felony or misdemeanor charged, and find guilty of the attempt to commit it. It then goes on to provide, that "no person so tried as herein *lastly* mentioned, shall be liable to be afterwards prosecuted for an attempt to commit the felony or misdemeanor for which he was so tried." How "*so tried* as mentioned?" The accused has been tried in the usual way only for the offence of felony or misdemeanor. And that being done, the jury may, if they like, find him guilty of the attempt for which he has *not* been tried at all. The "*so tried as mentioned*" is therefore nonsense; and what ought to have been enacted is simply this,—"and no person shall hereafter be prosecuted for any *attempt* to commit any felony or misdemeanor who has been previously tried for *committing* the same offence;" the reason being that the jury had then, by sect. 9, full power to convict of the *attempt*; and not having done so, the accused stands thereafter in the position of *autrefois acquit*, not only of the substantive felony, &c., but also of the attempt to commit it.

Sect. 16 is rendered unnecessary by sect. 17, and merely puzzles people to find out what it can be meant for. It is clearly not necessary to insert the separate counts for the three separate takings, inasmuch as the prosecutor may proceed for each without stating them at all, and without being put to his election.

Mr. Greaves most needlessly suggests that in case of doubt it may be well to insert the old form. We think otherwise; sects. 1 and 24 make it a most useless proceeding; and if people are not taught to rely implicitly on all the simplifying provisions of the act, the very utility of it is gone.

We are sorry on this ground to find, that at the late Gloucestershire sessions, nearly the heaviest in the kingdom, the old forms were still used.

The Act is however, on the whole, as well as its authors, deserving of great commendation.

J. C. S.

ART. VII.—THE SCOTCH BAR AND THE LEGAL COMPETENCE OF THE HOUSE OF LORDS.

The Appellate Jurisdiction; Scotch Appeals. Edinburgh: Adam and Charles Black, North Bridge. 1851.

THERE is here something which cannot be overlooked. In the unpretending form of a pamphlet there is presented one of the most distinct and telling statements on which the unprejudiced mind could reflect. With all the severity of plain truth, and with the clearest argument, the writer lays bare the existing inappropriate relations between the profession in Scotland and the law lords, who are treated not as peers of the realm only, but as men and as jurists, on whose imperial responsibility they are called to account. And such is the view in which the judicial attributes of the peers must be considered. They are called on to show cause for their darkly-derived jurisdiction; for though long acquiesced in, and now unconditionally submitted to, the jurisdiction is as regards Scotland a darkly-derived one.

In the singular case between the Scotch Bar and the House of Lords, for so the important question may be treated, there is involved a great issue, which no attempts in this country to isolate or disregard the jurisprudence of the north can obscure. The facts are put unmistakeably before us, and as legal jurors we feel called on to make our answer. Nor will it do, with an air of self-assumed but unfounded superiority, to slur the matter over, and, sitting amidst the trappings of legislative place, to talk slightly to *provincial* reclaimers. The Scotch are here no provincial reclaimers. They come forward in this question charged with a great imperial interest, and they tell us plainly that the peerage, without other helps, will not do; and that there is no royal or noble road to Scotch learning. And while they speak, they do so with a feeling of deep offence. We write advisedly. The absurd and unbecoming neglect of their lawyers and judges as part of our juridical commonwealth, which the public discussion of legal topics in this country, particularly the too-pretentious deliberations of the Law Amendment Society, so idly evinces, they can afford to disregard. But they are not content to sit down uncomplainingly, nor without the resolute vindication of self-respect, under the extemporaneous disparagement of parliamentary deliverances; and they will not have even the

distinguished and successful notables of Westminster Hall to talk to them of their ancient law.

We are concerned to learn that the discussion on the subject of this article, mooted towards the close of last session by Lord Aberdeen, has, so far from reconciling the Scotch lawyers to a continuance of the existing system, only quickened irritated feeling and deepened the sense of wrong; and they are determined to speak out, and not to cease to speak out, as indignant men, and to tell the truth to those who are the authorities of accident in high places. Lord Truro's *dolce far niente* way of meeting the case may, we hope, have yielded to graver thoughts when studying, as it is believed he has been doing, the important controversies from the Scotch courts, on which, not as Lord Chancellor,—for as the head of the Court of Chancery they have no desire to know him, or to cultivate intimate relations with his lordship as the exponent of that tribunal,—but as the presiding judge in the High Court of Supreme Appeal, he will be called on soon solemnly and deliberately to pronounce. When next he declares his views on questions of legal policy, let us hope Lord Truro will speak with more knowledge and with more wisdom; and let Lord Cranworth well weigh his words, and not again confound the kind of learning now-a-days brought to bear on the adjudications of the Privy Council with the judgments fitting to be pronounced under the spirit and principle of a system of jurisprudence of which he must be presumed to be ignorant.

But to our pamphlet. It is, we are assured from the most authentic source, the production of a learned gentleman, who is not only one of the most experienced and distinguished members of the bar in Scotland, but one of known eminence in general literature, whose writings have enriched not a few of our prominent periodicals; but who, to a becoming regard for the dignity of his country, adds none of the prejudices of a narrow, illiberal nationality. He comes forward as the champion of his forum, resting his appeal, not on the prestige of his name, but on the simple statement of one of the strongest cases for the regards of justice and truth which it is, we think, possible to imagine. And when we remember how the House of Lords stand in this matter, and that it owes its largest and most important appellate jurisdiction to the proceedings of the Scotch courts, from whose precincts discontented litigants are prone to wander in search of the chances offered by a foreign system where justice has other guarantees; when we remember all this, and that therefore the Scotch people and their bar have the deepest interest in the judicial wisdom and learning of the legal portion of the peerage,

and the strongest possible claim on a large, public and ungrudging consideration, we feel bound, as English lawyers, to accord to this Scotch writer and jurist a ready, willing and attentive audience.

He flinches not from his task, but speaks out like a man, and tells us all, peers and commoners, the grounds of that anomalous injustice which is his skilfully stated theme. Thus he opens it up:

"*'Nolumus leges Angliæ mutari,'* was the motto adopted by the guardians of the constitution of England. A Scotchman may be permitted to express a similar resolution, or, at least, a similar wish with regard to the preservation of the law of Scotland.

"We possess, at present, a law different from that of the sister country. It is a simple and consistent system; singularly free from unnecessary subtilties, fictions, and technicalities. It is well suited to the habits and character of the people, among whom it has grown up for centuries; it has worked, and continues to work, smoothly, soundly, and satisfactorily; and any threatened change in the system, we are convinced, would be deprecated by the universal voice of the people of Scotland.

"Whether a system of law, so well suited to the wants and wishes of the country, shall be preserved in its integrity, or be gradually undermined and supplanted by that of England, evidently depends almost entirely on the way in which it is practically dealt with in the court of last resort. *And so long as the anomaly continues to exist of the judgments of the Supreme Court of Scotland being reviewed by a tribunal presided over by English judges, and led by English advisers alone, the risk of tampering with the law of Scotland, which they imperfectly understand, and with which they still more imperfectly sympathise—and of making its peculiar principles bend to those of a law with which they are more familiar—will always be considerable.*

"And if, to this secret tendency, there be unfortunately added, not only a comparative ignorance of the jurisprudence of Scotland, but the want of any efficient machinery for enabling the Court of Appeal fully to understand its peculiarities of principle, or the forms of procedure which have grown out of them;—to solve in an authoritative form those doubts and difficulties which are raised in the course of hearing and adjudicating, *the chance that the fabric of Scotch law will in the end be grievously altered and defaced, becomes a high probability, if not a certainty.*

"Accordingly, it is needless to disguise that the impression has been gaining ground in Scotland, that *such has been for some time past the tendency of the appellate jurisdiction:—that the law and practice of Scotland are occasionally very summarily treated, both as to matter and manner, by that high tribunal; that little respect is paid to its established rules, and novel doctrines are introduced, particularly where the laws of the two countries differ in principle; that*

even where this is not actually accomplished, *doubts are thrown out, established authorities questioned, REMITS MADE, REHEARINGS ORDERED, and ENORMOUS EXPENSE occasioned, with no other result in the end, but to show that the original judgment was right, and the remit unnecessary.* We say, therefore, advisedly, that at this moment the general impression prevails, that the law of Scotland does not receive fair play in the Court of Appeal; and that this naturally arises out of the want of a sufficient acquaintance with the law itself, and of any present aid by which that want might be supplied at the moment when it was required."

A strange comment this on the complacent observations of Lords Truro and Cranworth and on the "works well in practice" fallacy. Verily, on the showing of this Scotch lawyer, the Privy Council should look after the plastic jurisprudence which it is its happy privilege to administer! We fear the Scotch are not disposed to accept the sort of judicial learning, which at the present day appears to find favour in that right honorable presence, but would desire something less imposing in form, but which to them is more real, and which appeals more faithfully to their juridical necessities.

Here is a pregnant paragraph, containing a remarkable dictum of Lord Eldon's:—

"We are of course aware that any such inclination or tendency to disparage Scotch, and set up English law, is disavowed by the learned personages who are the advisers of that tribunal, and the disavowal is, no doubt, made in perfect good faith. Those who imperfectly understand what the law of Scotland is, may imperfectly apprehend the changes they are introducing into it. They may be quite unconscious how far their whole views are coloured by English notions. But '*he must know little of the operations of the human mind,*' writes Lord Eldon in his anecdote book, '*who can be positively certain that he can withdraw, in the administration of Scotch judicature, wholly and absolutely from the mind, the influence which may have been created in it by the daily and hourly contemplation of the rules and principles of English law through a long course of years.*' The very universality of the impression referred to—to which we can speak—augurs in favour of there being some cause for it. Where all the world are agreed in smelling smoke, it is difficult to go to sleep in comfort, though noble and learned lords will have it that there is no fire."

But the pamphlet gets more precise, and we are told distinctly in the following lengthened extract what the specific complaint of our Scotch brethren is:—

"If the results in the law of Scotland hitherto have been less injurious than might have been apprehended—(for we are far from being persuaded that, to some extent, injurious consequences have not

already resulted), this has been in a great degree owing to the existence of counteracting causes, upon the continued operation of which it would be very unsafe to depend:—while changes in the constitution of the Court of Appeal appear to be in contemplation, which must tend strongly to aggravate the evil of which we complain, and increase the general distrust and dissatisfaction which already prevail with regard to the treatment and disposal of appeals from Scotland.

“Certain movements in Parliament last session, both in the House of Commons and House of Lords, are very significant on this subject, both in what they propose to do as to the appellate jurisdiction, and still more, in what they propose to leave undone, particularly in providing certain additional means for aiding the House of Lords in appeals from Chancery by calling in the assistance of the two newly-created Chancery Appeal Judges, in questions of nicety and difficulty; as they were previously entitled by law to do in the case of the Common Law Judges in appeals from their courts; while these projects are entirely silent as to any corresponding or analogous machinery for aiding the house in difficult questions arising under Scotch appeals.

“A clause to the effect we have mentioned (the 15th) was originally contained in the Bill to improve the Administration of Justice in the Court of Chancery, and in the Judicial Committee of the Privy Council. It has been dropt in the Bill as amended by the committee on recommitment, but dropt, we believe, on this footing only, that the House of Lords, under the advice of Lord Lyndhurst, held that the Bill, as brought into the Commons, was an invasion of their privileges, and that they already substantially possess the power proposed to be given.

“The scheme thus propounded is deserving of notice in more than one particular. First, it is an unequivocal admission of the propriety and necessity of furnishing aid to the Lord Chancellor in a *public, recognised and authoritative* form, in deciding questions of difficulty from the equity Courts of England, in the same manner as had previously been felt to be necessary in cases from the common law courts. Secondly, while the necessity of this assistance is thus admitted, with regard to the legal system with which that high functionary must be assumed to be comparatively conversant, no means whatever are provided—or apparently contemplated—for affording him similar aid in appeals from Scotland, of the law of which, in the general case, he may be comparatively if not wholly ignorant. That law he is left to acquire or investigate as he best may from the conflicting statements of counsel, or such private and unauthorized inquiries as he may institute for himself. And thus the most difficult questions of Scotch law and practice are to be delivered over for decision to an English judge, who does not profess to know the law of Scotland,—aided by one or two equity coadjutors, who being, if possible, still more new to the subject,—and without even that deep sense of responsibility which a Lord Chancellor of England must feel in the final adjudication of causes,—are quite as likely, we think, to bewilder as to enlighten, and to encumber as to aid.

“With a tribunal ‘thus sitting, thus consulting, thus in arms,’ to whom the law of Scotland is a foreign law, and the very language of the pleadings a foreign tongue, is it really to be expected that justice can be done to the law of Scotland, or to the great interests which our Scotch appeals involve? We do not mean to say that even a court so constituted may not deal tolerably well with questions where some broad or simple principles merely are presented for decision, but how is it to treat cases which involve nice shades of distinction, and which must be determined very often by analogies from other branches of the same law:—or questions of feudal title, of conveyancing, of forms of process, with others depending more on tacit usage than express law; or the many incidental difficulties which are raised in the course of hearing in the House of Lords, and which are not anticipated by the opinions of the judges in the court below, simply because in that court they had been stated, and never would have been listened to by Scotch judges. To such a tribunal, reasoning from analogy,—illustrations from other branches of the law of Scotland,—as furnishing parallels or contrasts to the case in hand, are addressed in vain: the illustration requires more explanation than the proposition which it is employed to illustrate:—‘The interpreter is the harder to be understood of the two.’ Again, in dealing with those cases of technical difficulty, where a nice discrimination and thorough knowledge of details are required, either to refer them to the category of cases already decided, or to distinguish them from such cases, the result, in all probability, will be this, either that great or reckless mistakes will be committed in endeavouring to show that the appellate tribunal can take a novel and independent view, or that, shrinking from the irksome responsibility of a nice dissection, they will simply affirm, without inquiry, the judgment of the court below.

“We cannot flatter ourselves that, under such a system, our law should long retain its identity; we are persuaded it will melt away as in the process of the dissolving views. We think we see the ancient fabric of our law already beginning to undergo this process of transition, its outlines wavering, growing dim, passing into other forms, till it reappears at length in a shape in which scarcely a trace of the original edifice is to be detected. To the English lawyer this may seem a magic process of rejuvenescence; to us, we own, the transformation presents itself in no such comfortable light. We hesitate about the benefit to be derived from exchanging our own simple feudal system for the mysteries of freehold and copyhold, of fines and recoveries, trusts and powers; and should really be loth to part with our own good old fashioned system of diligence, with its messengers and sheriffs in that part, even though the ghosts of John Doe and Richard Roe are seen rising in their room.

“Yet in this direction it would seem that things are pointing. The very fact that all this elaborate additional machinery is about to be provided for aiding the House of Lords in equity cases, where it is least needed, while Scotch appeals are to be left to themselves, with-

out the aid of any permanent or authorized assistant, seems at once a sufficient proof of the secondary importance attached to them, and a significant omen of their future fate."

The writer then notices the discussions raised in the House of Lords by Lord Aberdeen, to which we have already adverted, and the report by a committee of the Scotch bar, which we had an opportunity in our last number of laying before our readers. The pamphlet enforces the suggestion of that report as to there being a Scotch assessor in the House of Lords; but it declares that that officer should not be a mere adviser, but should be entitled to *vote*, that is, in plain terms, that a peerage should be conferred on the individual selected for the appointment. The suggestion is thus put:—

"It is true that the creation of unnecessary hereditary peerages is to be avoided, nor do the comparatively slender emoluments of the Scotch bar permit of the formation of those large fortunes which are necessary to support the dignity of a peerage in its descent. Cases indeed might occur where adequate fortune and ability were united, and in such cases, which would be rare, there seems no reason why a peerage should not be conferred in the ordinary way. It were scarcely presumptuous to ask that the law of Scotland should contribute one peerage to the House of Lords, when the law of England furnishes so many. But, in the general case, the difficulty might surely be easily met by *attaching the peerage to the office itself*. If this be said to be an anomaly, it is not wholly without example. The Bishops sit as peers in the House of Lords on this footing, and we cannot suppose there can be any thing alarmingly unconstitutional in the suggestion, when we find one so conversant with the law and usage of parliament, as the noble lord who is at present Chairman of Committees of the House of Lords, giving notice last session of a proposition to create the chief offices of the English Bench into baronies entitling the holders to a seat in the House of Lords *by tenure of their offices*. Practically, therefore, the difficulty as to the position of the new office in the House of Lord does not seem to be great."—pp. 12, 13.

The absolute justice and truth of the following remarks by the writer it is idle, if not insulting, to deny:

"If English lawyers, with due enlightenment at the time, may prove valuable coadjutors in the decision of Scotch questions, which we readily admit—and with which, *be it observed, this proposal in no way seeks to interfere*,—why should not an eminent Scotch lawyer, well versed in the general principles of jurisprudence, which the course of legal education and habitual practice of the law of Scotland are at least as well calculated to ensure as those of England, not be of equal use in the decision of English causes? Are we really to be told that this capacity of understanding the law of a foreign country is so entirely one-sided, that the English lawyer can easily master, and successfully administer, the law of Scotland, but that the law of

England must always remain a sealed book to the Scotch lawyer? There is not a single theoretical objection which can be stated against the co-operation of a Scotch lawyer in English appeals which does not equally apply to the part taken by English lawyers in Scotch appeals—in which, notwithstanding, their interference is assumed to have worked well.

“If even this should still be considered as insufficient to furnish adequate employment, and to keep the judicial faculty from rusting, the legal discussions in the Privy Council might form another field within which the time and talents of an eminent Scotch lawyer might find fit occupation. From the nature of the cases with which the Privy Council are called upon to deal, requiring in not a few knowledge of the Civil law, the Canon law, Consistorial law, and the great principles of international jurisprudence, it humbly appears to us, unless greatly misled by national vanity, that this is precisely the arena on which a Scotch lawyer might meet his competitors with the least chance of failure, or rather with every probability of success. No one has ever maintained the highest rank at the Scotch bar without having acquired at least a considerable mastery of those accomplishments which should characterize the members of this high tribunal.”—pp. 13 to 15.

The advantage of having a Scotch legal peer in the Lords to assist in the legislation for Scotland, and in particular to carry through the various law reforms and forensic improvements which the progressive condition of the country periodically demands, next engages the attention of our legal pamphleteer; and it is worthy of note here, in passing, that the writer mentions the exclusion of Scotland from the recent change effected in this country in the law of evidence, as an instance of the wrong Scotland suffers by the absence from parliament, and especially from the chamber of the peers, of any independent legal representative whose duty it would be to watch over her national concerns, and prevent her lagging behind England in the march of improvement. Another evil, equally great, arising from the want of such an officer is pointed out, namely, “that bills intended to remedy grievances which are only felt in England, are sometimes, by mistake or inadvertence, made applicable to Scotland, and that too, in a form which renders them almost unworkable, an event which could scarcely ever occur if there was a Scotch lawyer to watch over the progress of such measures in the House of Lords.” And a curious instance of this is given.

Our author, however, is careful to guard himself against any extravagant argument or unreasonable demand. He says:

“Let it always be kept in view, that we are not contending for the exclusion of English judges from the decision of Scotch causes. On the contrary, it may very well be, that, from the union or collision of mind on the part of men who have studied law, as it were, under

different masters, and viewed it in different lights, the most important benefits may be derived. What we suggest is, simply, that in order to enable English judges to determine soundly, they should have the means of knowing accurately the law they are administering, by the admission, in a permanent form, into the House of Lords of some accredited representative of the law of Scotland, to remove doubts, to correct misrepresentations, to simplify technicalities, to prevent unnecessary reinites, to shorten long disquisitions by brief explanations, and thus to accelerate decisions and diminish expense."—pp. 17, 18.

There is given a critical notice of the list of Chancellors, from the period of the union with Scotland until the time of Lord Eldon. Some of these men, such as Cowper, Harcourt, Macclesfield, King, Talbot, York, Bathurst and others, who, from their position of Chancellor, had the right to review, and, if so minded, to reverse, the solemn decisions of the whole judges of Scotland, were utterly ignorant of even the most elementary knowledge of Scottish jurisprudence. But there are also some distinguished names. We select the testimony borne to a great one:

"At last comes the name of one—Lord Hardwicke (1737 to 1756), under whose sound and powerful direction it may be admitted, the system of appeals worked well. But how? and why? Lord Campbell answers the question most satisfactorily. 'That to which I mainly ascribe the brilliancy of the career on which he was entering, was the familiar knowledge he acquired of the Roman civil law. The taste for this study he is said to have contracted from the necessity of preparing himself first to argue as an advocate, and then to decide as a judge, appeals to the House of Lords from the Court of Session in Scotland. In that country, he found the Roman civil law regulating the enjoyment and succession of personal property, and even frequently alluded to by way of illustration in questions respecting entails. Like most English lawyers, in preparing for the bar, he had hardly paid the slightest attention to it. While attorney-general he was retained in many Scotch appeals, and for the occasion he was obliged to dip into the Pandects and commentaries on them; but although he had the discernment to discover the merit of these admirable compilations, it was not indispensably necessary for the discharge of his duty that he should examine them systematically, and his time was filled up with more urgent occupations. Now that he was to sit in the House of Lords as sole judge, to decide all the appeals from Scotland, he saw the necessity of making himself a profound Scotch lawyer, and he found that this was impossible without being a good civilian. Therefore, *having gone through Mackenzie, Bankton and Stair, he regularly proceeded to the Corpus Juris Civilis, with Vinnius, Voet and other commentators, and his mind was thoroughly imbued with the truly equitable maxims of this noble jurisprudence.*'"

The "rugged Thurlow" is spoken kindly of, and we need not say that homage is paid to the names of Mansfield and Eldon.

The pamphlet proceeds to exhibit a sad catalogue of technical blunders and other more serious miscarriages by the House of Lords in their jurisdiction *in the LAST resort* of the law of Scotland; and winds up with the following allusion to a tender subject :

“ One other remark forces itself on our notice, though we are aware that we are treading on delicate ground. It is needless to disguise that a considerable feeling of dissatisfaction prevails in Scotland with the uncereemonious manner in which, in the Court of Appeal, the opinions of Scotch judges, and their conduct of cases, are treated; chiefly, perhaps, in the way of incidental remark or caustic commentary, in the course of the argument, but at times also embodied in a more deliberate form in the opinions of noble lords. We are convinced that this error—unintentional as it must be—requires only to be brought respectfully but candidly before the notice of the House of Lords to ensure its correction. Very different—unless our memory deceives us—was the bearing of Lord Eldon; rebuking the errors of the court below without hesitation, but also without acerbity, without sarcasm; most guarded, indeed, in expression when he was most uncompromising in substance. ‘*Sapiens prætor offensionem vitat, æquabilitate decernendi, benevolentiam adjungit lenitati audiendi.*’ An opposite course may, for the moment, lower the Court of Session in public estimation; but assuredly it does not tend to elevate the Court of Appeal.”

It is singular that the pamphlet says nothing about the *delay* in giving judgment, which we are told by the Law Review is the sole cause of the discontent that prevails on this subject in Scotland. The TRUTH must be told, the Scotch do not so much object to Lord Truro's delay. They are possibly willing to wait a little, if at last they procure the pure and orthodox administration of their own law. What they cry out against is the utter inefficiency and jurisprudential incompetence of the noble individuals who are put forward as their appeal judges.

We ask no apology for thus occupying our readers. There is a bad feeling in Scotland on this subject. And truly the Scotch have much to complain of in the treatment of them and their national concerns by the powers that be in this country. And at a time when the whole tendency of law reform accomplished and projected in England, is an entire assimilation to the Scotch system, it seems especially ungracious that their sincere efforts for the increased efficiency of their legal administration, and for the improved judicial capacity of the House of Lords, should be frustrated by influences which look too like the reflex shadowing of pride, and marred by inadmissible attributes, where all should be dignity, learning and candour.

ART. VIII.—FUSION OF LAW AND EQUITY—PROPOSED EQUITY COUNTY COURTS.

MR. FIELD and the Law Amendment Society have sounded the tocsin somewhat loudly, and the older members of the profession have been a good deal startled at the boldness of Mr. Field's views and American experiences, and not less so at the countenance they have received from the numerous lawyers—many of them men of long standing and undoubted eminence—who compose that most active and useful body—The Law Amendment Society.

Mr. Field declared his views very fully to it in November last, and we extract the following passage from the Annual Report of the Proceedings of the Society on the subject:—

“The information given on that occasion was so striking and important, that the council thought it demanded from them the utmost care and attention. They appointed the special committee alluded to to consider the whole subject; but they also instituted an inquiry in America as to the operation of the New York Code. In this they were assisted by Mr. Lawrence, the ambassador from the United States, who kindly undertook to forward the questions framed by the committee for the purpose of eliciting answers from persons the best qualified to give sound and impartial testimony. The council have continued to receive from many sources information on this subject, and a very considerable body of most valuable evidence has been collected. The result is, that the council now state their opinion to be, that this reform has been eminently successful. Eleven of the judges of the superior courts of the State of New York have expressed this sentiment,—one of them personally at a meeting of the Society on the 14th day of April last; and although this has not been confirmed by the unanimous opinion of the legal profession of that state (which was hardly to be expected), yet the council believe that the large majority of the Bar of New York, as well in number as in talent and eminence, have expressed a clear and unhesitating opinion in favour of the beneficial operation of the code. To this it should be added that the public have given their concurrence; and no better proof of the popularity of the new code, or its advantages expected to be derived from it, can be given, than its adoption by many other most intelligent States of the Union in which it has been carried by acclamation. It cannot be doubted that the distinction between law and equity will not long exist in any portion of the United States. But here the council are induced to ask a question of greater interest to the Society. How long will this distinction exist in our own country? Since the proceedings of this Society have become known, the council have reason to suppose that in our colonial dependencies it cannot much longer endure. In the most

important dependency of the crown the chief justice has, in a private communication to your president, declared that he should be exceedingly glad to adopt the 'code,' which he thinks simple and practical. In another the chief justice, in a communication to a member of this Society, states his adherence in terms even warmer, and declares that this amalgamation of law and equity is the panacea for most of the defects in equity procedure. These opinions come from India; but the same conclusion is gaining ground in British North America, and in other portions of our colonial possessions where this anomalous distinction prevails. And even in England and Ireland the legislation of the present session has gone some way in conferring complete legal and equitable jurisdiction on the county courts. In Scotland this distinction between law and equity never existed; and the council, taking all this into consideration, beg to express their conviction, that it cannot long be preserved in the superior courts of England or Ireland; and to this they have been mainly guided by the first report of the special committee of this Society, which has, after great deliberation, come unanimously to the resolutions, 'that justice, whether it relates to matters of legal or equitable cognisance, may advantageously be administered by the same tribunal, and that all litigation, whether it relates to matters of legal or equitable cognisance, may be advantageously subjected to the same form of procedure.' The same committee are prepared to support this resolution by the outlines of a code of procedure. In expressing their confidence in this committee the council beg to state their conviction that there is no instrument better adapted for the investigations requisite for legal reform than the committees of this Society have shown themselves to be. They are not acquainted with any other machinery in this country capable of arriving at results so safely, so cheaply, and so speedily."

This is high praise. The great question still remained, however, to be discussed, namely, how far and *quo modo* we might advisably adopt a similar procedure here.

Accordingly, the matter underwent further discussion, and at the last meeting of the society, in December, the committee proposed that steps should be taken to insure, in either house, the moving an address to her Majesty, containing resolutions to the following effect:—

"1. That the principles of law and equity ought to be administered in the same court and under the same system of procedure, the equitable rule in cases of conflict controlling the legal.

"2. That a paid commission ought to be forthwith appointed to prepare a code of procedure for the purpose of carrying out the above reform.

"Until such a code can be prepared, your committee are of opinion that the amalgamation of the jurisdictions should not be attempted; as they believe that it would be highly vexatious to introduce a system of provisional procedure, which would of necessity be extremely im-

perfect, and would, moreover, be liable to be swept away just as it was beginning to be understood. Still there is no reason why law amendment should stand still during this period of preparation, for there are many important changes of procedure which are sure to be adopted in any system of fusion, and which, without introducing any embarrassment, could not fail to give much present relief to the suitors.

"Such alterations might be immediately effected by a number of short bills, which your committee suggest should be introduced into Parliament as early as possible after the recess.

"The following are some of the bills referred to:—

"1. A bill to require all pleadings, whether at law or in equity, to be verified on oath, and to abolish all objections as to the form of pleadings, except the objection that they are calculated to embarrass or mislead.

"2. A bill to substitute, in all cases, *vivâ voce* examinations for written interrogatories and the interrogating part of the bill in equity.

"3. A bill to enable courts of common law to grant injunction and discovery, and to appoint a receiver.

"4. A bill to authorize judges at common law to try questions of fact without the intervention of a jury, unless either of the parties to the action should require such intervention, and to authorize judges in equity to try questions of fact with the intervention of a jury, if any of the parties to the suit should require such intervention.

"5. A bill to abolish motions in arrest of judgment and *non obstante veredicto*, and to enable parties who have demurred, and have had judgment against them, to plead over.

"6. A bill to empower defendants in courts of law to set up equitable defences.

"7. A bill to enable the parties to any action or suit, at any stage of the proceedings, to agree upon any question or questions, either of law or of fact, to be submitted to a court or jury, as decisive of the merits of the cause.

"8. A bill to consolidate and amend the law as applicable to commissions and *mandamuses* to examine witnesses.

"9. A bill to direct that the evidence which, under the present system in chancery, is taken by the examiners of the court, should henceforth be taken before the equity judge.

"10. A bill to abolish the rule in equity respecting the non-publication of evidence."

There is no doubt that some such bills are essential for smoothing the way, not for the ultimate fusion of the two branches of our judicature, but for the due administration of equity itself. Let us see if absolute fusion is really necessary to the object in view.

On the 17th of January, at the Law Amendment Society, on the motion of Mr. Stewart, the report of the Equity Committee on the procedure in the Master's Office was taken into con-

sideration. After going at length into an investigation of the evils incident to the present system, the committee submitted the following resolutions for the adoption of the society, which they obtained :—

“1. That the present practice of commencing suits in chancery before a judge, of referring either the whole or a part of the matters involved in the suit to the master, and of reporting the master's decision to the court for its ultimate determination, is the cause of the greater part of the delay and expense of equity proceedings. 2. That suits in equity might be most advantageously disposed of by the judges sitting in court or in chambers, as might best suit the circumstances of the case. 3. That the office of master in chancery, as at present constituted, should be abolished; and that, with this view, vacancies in the office, as they occur, should not be filled up.”

This seems a very small result from such an ample beginning.

Although these resolutions were passed, it was not without considerable discussion; and Mr. Henry Webster made the following protest against the course taken by the meeting :—

“He objected to the resolutions, on the ground that they did not go to the root of the evil. If they were to have any reform of the mode in which the administration of equity was conducted in this country it ought to be effectual. The reform ought not to be piecemeal; and, having considered the subject very much, he had come to the conclusion that the only satisfactory mode of administering equity would be by erecting local courts of sufficient importance as regarded the extent of their jurisdiction and the character of the judges as to give them weight, and to transfer from London all the preliminary business now transacted in the master's office, except that which would arise in the metropolitan district: and he firmly believed that the legislature would eventually come to that conclusion also.”

We entirely concur in this view of the matter. Every one knows that three-fourths of the delay under which suitors suffer arises from the almost invariable practice of sending everything to the masters, who can finish nothing. *What the country wants is a prompt mode of settling equity suits.* We do not see how this is to be done by a change of name and place in the present staff of administrators, or the present staff somewhat enlarged. We want an equity court in every county, to sweep off monthly the vast proportion of cases which really require no great skill to decide, and which it is the curse of the present system to bring into the ponderous machine, which is endurable only for the heaviest and most intricate suits—forming about one-twentieth part of the total number! Besides this, there are multitudes of cases where injustice and robbery are being constantly

tolerated sooner than incur the risk of still greater loss by a suit in Chancery with its present costs and terrors. If the amendment of equity procedure does not apply a remedy for these evils by rendering simple suits in equity as expeditious and economical as simple suits already are at common law, it effects nothing worth striving for.

But what has all this to do with the fusion of the equity and legal judicature? How will fusion help the remedy? In vain do we search for a sufficient reason or argument for this course in the very judicious and well-founded objections Mr. Field has stated against the present abuses and defects of our equity procedure. Let us analyse and abstract his speech at the London Tavern: it is well worth recording:—

“In the first place, the long bills and answers which once existed in the American Court of Chancery, and which still exist in the English,” he said “were all done away; no repetitions are necessary, and scarcely any are given, because they have got rid of the long machinery which still exists in England, where, if the defendant does not answer every plea, there are exceptions and exceptions and exceptions; so that what formerly occupied a year in America is now settled in twenty days. The next effect is, that all parties are careful of the statements they put in their pleadings, because both parties are liable to be called by their adversary into the witness-box; so they are careful of inserting in their written pleadings anything that they would decline to verify in the witness-box. Further, all the mischiefs that used to arise from not going before the right tribunal are now avoided, and all causes are determined on their real merits. In fact, the view taken by the commissioners in devising the new forms of procedure, was to make the system correspond as nearly as possible to that which takes place in a family when one member complaining of another is brought before the father, who inquires into the facts of the case, and determines who is right, and who is wrong. Did they ask him how it had succeeded? Perhaps it was not for him to reply, because it might be thought that he would overstate what he had contrived. But so far as he has learned from others, and so far as his own experience has gone, it is completely successful. The experience of another year, since he last had the honour of addressing an English audience, has not shaken the confidence of the public in its merits, many of the difficulties which at first surrounded it have vanished; and although there may be faults still found with the details, he does not believe that there is a respectable lawyer or a judge in the United States who would affirm that there is any insurmountable difficulty in making a uniform course of procedure in all cases legal or equitable.”

Nor in England either. But what has this to do with a fusion of the two classes of cases either as to judges or courts? The reasons for maintaining them distinct appear to us to be un-

affected by all Mr. Field has alleged. Highly useful and perfectly true were the able remarks of Mr. Pitt Taylor, but not one atom nearer are they to reasons for fusion. He wished for the consolidation and codification of the law, and he illustrated his argument by these facts :

“ There are thirty-eight large quarto volumes filled with statutes, and he calculated that they contain, on an average, 800 pages each of small print ; so that the statute law of the realm, exclusive of all local and personal acts, fills at least 30,000 quarto pages. The object of the commission, therefore, would be to form, in the first instance, a new edition of the statutes, from which should be omitted all the acts and the parts of acts that have been repealed or have become obsolete ; and they might then proceed to consolidate and classify the remainder. There are, for instance, at least forty statutes on the simple question of costs, ranging from the time of Edward I. down to the last session. There are about an equal number of statutes of limitations, extending over the last two hundred years. The statutes with reference to the poor may be calculated by dozens, coming down from the time of Elizabeth. The law respecting municipal corporations is in a state of frightful confusion, owing to the numerous amendments of the act of 1835. The statutes on many other branches of the law will be found equally numerous ; and nothing in the world would so promote the benefit of the profession as to have these statutes classified, arranged, and condensed.”

We heartily concur in these valuable suggestions. They will greatly promote, if effected, the success of our project, viz., that of *distinct Equity County Courts*, and in the same degree facilitate the administration of the common and criminal law ; and they will do so just as well without fusion as with it.

The “ Law Times ” makes these remarks, which appear to us to have more practical good sense than all we have seen, heard or read on the subject elsewhere:—

“ There is a vast class of cases, of a purely administrative character, in which there is no dispute as to *the law*, which it would be absurd to send up to London to be disposed of by officials there, at a distance from the parties, even if the procedure for disposing of them should be simplified ever so much. The mere fact of the hearing being in the metropolis, instead of in the locality, involves a certain amount of *unavoidable* expenses. The witnesses must go to the court, there must be long statements in writing, there must be agency charges, and there must be a certain amount of delay from the pressure of other business.

“ Obviously all *such* cases ought to be confided to the county courts, where there is a machinery for disposing of them speedily and cheaply. The procedure might be very simple. There should be a *claim* stating the facts. Upon this, summonses should issue to all the parties interested to appear, if they please to protect their interests. If they

do not choose to appear, it should be the duty of the judge to protect them. Upon an examination *viva voce* the facts would be ascertained, and the order made, which order should be filed in the court of chancery, and operate as a decree, with the same powers for its enforcement. Should the case involve any difficult question of law, or any extensive interests, it should be in the power of any party, *with leave*, on cause shown, to move it into the superior court, on giving security for the costs should he not succeed; or the county court judge should have a discretion to remit it to the superior court, should he be of opinion that it is not a fit case for his own jurisdiction."

If this were done, there would be no actual necessity for abolishing the masters in London. We agree with the judicious remarks of Mr. Commissioner Fane:—

"His idea was, that if the master in chancery had the same jurisdiction to decide all causes which are not in their original nature litigious, such as all those relating to assets and to the administration of trust funds, that would be a system that would work extremely well. He was satisfied, from the experience he had had, that it would be far better to place the master in chancery in the position of a judge, and to give him an original jurisdiction, enabling him to hear and decide, subject to an appeal. He thought that would be a cheaper and more effective system than that which was proposed—of having nothing but a judge and no master."

Raise the powers of the masters, but do not abolish their office. It must be remembered, that if there are county equity courts, suits will multiply and so will appeals. It will be just as necessary, then, that there be prompt and economical appeal courts, and that the appellate jurisdiction be rendered in all respects and branches more effective than it is.

Lord Brougham has come out nobly of late as a law reformer, and we heartily hope he will be ready, when parliament meets, with a bill embodying a scheme, and giving jurisdiction to the county courts to decide the simpler class of equity suits. We may be permitted to suggest that rules for equity suits in those courts should in such case be most carefully framed, and that they should go into great detail.

We beg also to submit whether it would not be advisable to divide the judges into two classes; the first class to consist of equity judges, not more than twelve in number, receiving a higher salary, say 1400*l.* or 1500*l.* per annum, each of whom should once or twice in each month sit in the chief town, or in two or more of the chief towns of each of a group of counties, for the exclusive hearing of suits in equity and bankruptcy; the second class to consist, as at present, of sixty common law judges, at the present or slightly increased salaries.

It would certainly be desirable that distinct days should be

set apart for the hearing of equity suits, even if the adjudication of them were transferred to the present judges, otherwise there would be too many summonses issued in larger places to be conveniently heard—greatly to the retention and annoyance of the suitors and witnesses. It is also impossible that many of the present judges could do more work than they do already; there must, therefore, be some increase in the staff of them. If so, is it not judicious that there should, on the principle of a division of labour, be distinct judges for distinct functions? Those among the present judges who are most eminent for their ability, and especially those who are best acquainted with equity, would be doubtlessly promoted to the rank of equity judges. Thus there need be no unjust placing of new judges over the heads of the old ones. It is obviously advantageous that the general body of the county court judges should not be suddenly invested with the administration of a branch of jurisprudence of which most of them are comparatively ignorant.

The advocates of fusion will say this is a short-coming of their principle. Possibly it may; but if so, their principle leads them to prefer what is inexpedient to what is expedient, and to an entire disregard of the principle of a division of labour and its manifest and manifold advantages. If fusion means the simplest mode of placing law and equity in equal accessibility to the public, with equal advantages in respect of prompt and cheap justice, we believe that our proposal meets it; if, on the other hand, fusion means a jumble of different functions, we are happy to say it avoids it.

If there be really any benefits in fusion which our proposal does not meet, we should greatly like to see them set forth, as we are desirous of acceding to a wish expressed to us from influential quarters that we should facilitate the free discussion of the merits of that system in our pages.

ART. IX.—SIR JOHN PATTESON.

THE close of Hilary Term brings with it the retirement from the Queen's Bench of the senior Puisne Judge, who for upwards of twenty-one years has maintained a high character for soundness as a lawyer, and firmness, coupled with urbanity, as a judge; and who will carry with him into his retirement the respect of all who have practised before him, and the esteem of every one who has occupied with him the same judicial bench.

It is not to any brilliancy as an orator, or to any profoundness as a general jurist, that Sir John Patteson owes the place he has acquired and maintained among the living legal worthies of our country; his ability has consisted mainly in his power of logical deduction; in his intimacy with that long course of decisions in our courts, which has moulded the common law to the every-day requirements of a vast commercial community, and rendered that law, which had its origin in times when our mercantile power was in its infancy, fit for merchants, whose transactions at home and abroad are unrivalled for their extent and importance by any nation ancient or modern; and in his power of applying the principle of those decisions to the constantly varying requirements of a constantly changing and ever new state of circumstances. Without this moulding, indeed, of our common law, it would have been impossible to carry on the affairs of such a country as this. The attempts to supply existing defects by statute have never proved successful; acts upon acts have accumulated, but, voluminous as they are, the mass would have been overwhelming had it not been for the eminence of our judges, who have seized the spirit of the common law, and by thus adapting it to existing wants rendered legislation comparatively needless. This result has not been produced by the elevation to the bench since the Revolution of 1688 of the most dexterous of *Nisi Prius* advocates, or of the most eloquent forensic declaimers, but rather by the constant supply of puisne judges from those members of the bar, who have made the pleadings in the cause and the application of the existing decisions to each particular case their peculiar study. The bench for the last half century has shown that it is not necessary to look among the silk gownsmen only for high judicial qualifications; and at the present moment there is more than one judge on the bench, who can be counted among the most accomplished lawyers, who has never had a lead on any circuit, and has at once exchanged the stuff gown for the ermine. The

career of Sir John Patteson is an exemplification of this general rule.

Eton can boast largely of her long line of divines, and still more largely, in recent days, of her illustrious statesmen. Her honour does not, however, end there : her list of lawyers, if less numerous and less distinguished, has not been less notable. She can point with honest satisfaction to Lord Camden ; in the present century she has placed two chief justices in succession over the Court of Common Pleas : Sir James Mansfield and Sir Vicary Gibbs were hers ; and it has been with no false pride that at the anniversary dinners the worth of her lawyers has been acknowledged. It has been demonstrated that proficiency in hexameters and pentameters, has not been incompatible with that closeness of application, and that absence of imagery, which are required from the special pleader, and are indispensable for the judge. Within her time-honoured walls Sir John Patteson received his education, displaying powers which acquired for him the honours of Eton, and transferred him with a sound reputation to King's College, at Cambridge, where we find him as a scholar in 1809, and in ordinary course among the fellows in 1812. At that period, and up to a late term, the members of King's College were not required to present themselves for any university examination before they took their degree, and there is not therefore left for us that test of collegiate distinction which a wranglership would have supplied.

On leaving Cambridge, Mr. Patteson entered himself at the Inner Temple, and applied himself to special pleading, with such success, that when he joined the Northern Circuit, he was known as a not less subtle and accurate pleader than many who had preceded him on that important circuit. The Bar at that time was divided between the two classes of notables by whom the reputation of the profession is maintained, her orators and her draftsmen ; the latter no less useful to the client and to the cause than the former, the one absolutely needful to the other : the merits seldom combined in the same individual, and when combined never capable of being exercised at the same time to the fullest extent. In the older days of pleading, when pleading was a science, the cases arising out of real property and from commercial transactions were more numerous in Yorkshire and Lancashire than on any other circuit. Moreover it was not the rule to confine the number of counsel to the minimum of a leader and a junior. In important or intricate cases, several members, both of the inner and outer bar, were engaged for the plaintiff or defendant. In one case of a disputed boundary at a

York assizes, not of an extraordinary nature or importance, the brief for the defendant has indorsed upon it the names of no less than six counsel; viz., Serjt. Heywood, Mr. Wood (who drew the pleadings), Mr. Sinclair, Mr. Holroyd, Mr. Gregory and Mr. May, whilst the other side had no less than five counsel, of whom Mr. Law was the leader and Mr. Chambre the pleader; the taxing masters were liberal; and there was a perfect revelling in replication and new assignment, plea to the new assignment, replication thereto, and all the other requirements of the time. On such a circuit, and under such a system, it was much easier for a pleader to acquire distinction, and what is of equal importance, remuneration, than it is now. From the circuit, the reputation of the junior who had settled the pleadings, and advised on the evidence, travelled to town, and the motions for new trials opened Westminster Hall to him. Here the acuteness of Mr. Patteson was well known; and his acquirements were made available to the law advisers of the crown by Mr. Littledale, who at that time held the office of counsel to the treasury, and whose assistant Mr. Patteson became.

In his private practice he was engaged in many of the heaviest mercantile cases, both on the circuit and in London; and, in the public portion of his duties, he necessarily came in contact with Lord Lyndhurst, whose friendship—ever warm and cordial—has over and over again been proved to have been most valuable to every person who has had the good fortune to have formed and to have merited it.

It was whilst Lord Lyndhurst was Chancellor, and during the administration of the Duke of Wellington, in the autumn of 1830, that the proposal for appointing a fourth puisne judge, to keep down the arrears in the common law courts, was adopted. Mr. Justice Bayley was transferred from the King's Bench to add weight to the decisions of the Exchequer; Mr. Taunton was appointed, in his stead, to the King's Bench; and the fourth seat in the respective courts was filled, in the Michaelmas term of that year, by Lord Lyndhurst's appointment of two of his own friends, and two able stuff gownsmen—Mr. Patteson to the King's Bench, and Mr. Alderson to the Exchequer. The existing fashion of the personal interference by the Prime Minister in the selection of the judges—and, indeed, in every state department—was not then in vogue: the responsibility rested with the Lord Chancellor, who was far more likely to know the fitness of individuals for the appointment than any civilian sitting in Downing-street, who may happen—as the story goes, it is not a mere possibility—never to have heard the name of some

of the most distinguished members of the bar, and who looks to parliamentary support as a chief qualification. The new judge, on taking the coif, gave rings with a motto very expressive of his character—" *Nec temerè nec timidè*," and immediately afterwards took his seat by the side of Lord Tenterden, Sir Joseph Littledale, Sir James Parke and Mr. Taunton. To say that the loss of Sir J. Bayley to the King's Bench was fully supplied by the appointments then made, would be to aver what was not probable, and scarcely possible; nevertheless, the newly-formed court was in every respect efficient, and the services of Sir J. Bayley were transferred to a court where they were greatly needed.

The duties of his office were at once entered upon with vigor by Sir J. Patteson: he was not content with the stereotyped line of—"Mr. Justice Patteson concurred:" he gave, neatly and concisely, the reasons for the opinions he had formed: and, so long as Lord Tenterden presided, little more was required. When, however, Lord Denman was promoted to the Chief Justiceship, and after the assistance of Sir James Parke had, like Sir J. Bayley's, been transferred to the Exchequer, the value of Sir John Patteson's peculiar acquirements became more thoroughly appreciated. To his acquaintance with the principles and practice of pleading, and to his ready application of the knowledge he possessed, the court was largely indebted for the soundness of its decisions; and, in matters of practice, that aid seemed almost indispensable. The obligation was felt and acknowledged not only by Lord Denman, but it has been strongly expressed by Lord Campbell: and it is understood to have been at the solicitation of both these chiefs that Sir J. Patteson has postponed thus far his intention of retiring from the seat, where his continued deafness has rendered the discharge of his office in banco irksome to himself, and, as he must have felt, has prevented him from giving satisfaction at *Nisi Prius* and on circuit.

It was always, however, in cases in banco (particularly whilst sitting alone in the Bail Court), and in summonses which came before him at chambers, that his merits were most conspicuous. It was not easy to mislead him upon any point of evidence or upon any technicality: he had too full a knowledge of the art of pleading to refuse a proper and necessary application; yet he would not sanction any of the attempts which are constantly made to avoid or defeat the new rules. Those rules were adopted after he came to the Bench; they did not perhaps altogether square with the notions he had formed in his early practice below the Bar. It is not every one who can discard without some compunction the practice with which he has been long familiar,

or treat with apparent disrespect a science in which he is a proficient; moreover, the subject of this notice did not profess to be an ardent reformer of the law, and he certainly never was an innovator for the sake of change alone; in his decisions, however, he gave, as it became his position, a fair construction to the new rules, and his orders were seldom appealed from to the full court.

Presiding at Nisi Prius, he was less successful. In long and intricate cases he was not fully aware of the importance of that condensation which jurors require, country jurors especially. In his desire to place the whole matter fairly before them, he sometimes elaborated the details so far that their attention was not sufficiently directed to the main point, and there was consequently an occasional miscarriage of cases, which would have been rightly determined had the decision rested with the single judge, and not with a mixed and constantly changing body. If that body had possessed his own logical mind, they might have weighed each portion of evidence with like care and with due exactness. The value of each fact would have been more accurately settled. They had not like powers of discrimination, and hence they failed. The respect in which he was held by the Bar compensated in some measure for this deficiency, inasmuch as the leaders abstained from pressing upon him irrelevant matter, and from overloading the strong points of their case. The tacit influence which the individual judge invariably exercises over the mode in which the practitioners before him conduct their cases was apparent whenever he went the circuit; and his misdirections in law were rare exceptions, so that the suitors had in the main little reason to complain.

With country jurors, in criminal cases, the matter is not easily arranged. There are the local prejudices and the local fallacies to be dealt with. At the Old Bailey, as Gilbert Gurney tells us, the zig-zag system prevailed at the post-prandial trials; one man was acquitted and the next convicted, on a kind of compensating principle, which was amusing if it was nothing else. At the assizes, on the contrary, there is no such rule; the fame of a villain's exploits has been spread far and wide, and the determination of a portion of the jurors is to convict him at all hazards. They do not even require the instruction of a certain learned and now departed recorder for an eastern borough, who, when the jury returned with a verdict of "not guilty," in the case of a prisoner indicted for stealing ducks, but added that he nevertheless stole one of the juror's chickens, advised the worthies to reconsider their verdict, to import into their consideration the fact that the prisoner stole the chicken, and then determine

whether he was not more likely to have stolen the prosecutor's ducks, and thus obtained the verdict of "guilty." The country jurors very often act, without such a direction, upon the character of the prisoner, the frequency of the crime, or the circumstances of the district; and woe betide the unfortunate prisoner who comes across them when in this fit. Whilst another class of jurors consider themselves as the exponents of what the law ought to be, rather than what it is. They act upon the rule of the Cinque Ports jury, who returned the verdict of manslaughter against a man for stealing a pair of leather breeches, of more than forty shillings value, from a dwellinghouse, because that offence was at that time punishable with death, and the jury meant practically to mitigate the severity of the criminal law, whilst they would not allow the prisoner to escape entirely free; nay, some go so far as to violate their oaths, and refuse by their verdicts to convict, where they look upon the punishment as greater than, in their judgment, is warranted or necessitated by the extent of the offence. We do not say that these odd and opposite notions of jurors do not in the main work some good; that their perversity has worked mischief unmitigated, or that the country has not sometimes benefited by the condemnation, through general reputation, of a rogue, or from the forced alteration of what was once one of the most sanguinary and has now become one of the most merciful of the criminal codes in Europe; but these are rude and unsatisfactory modes of obtaining a good end. It is doing evil that good may come of it. It is a temper, however, with which judges have to deal, and a troublesome task they have. In this task, Mr. Justice Patteson has not been, as few men have been, uniformly fortunate. But his mild and placid manner, and the absence of anything like unseemingly harshness towards the prisoners in serious cases, has often had the effect of stopping the prejudices or the caprices of the jury, particularly in those—and they are a numerous class of—cases, where a strong popular notion has prevailed, on the one side or the other, out of court.

We have not space, nor would we weary our readers with a minute examination of the judgments of this learned judge in Westminster Hall, as they stand reported in the volumes of Barnwell & Adolphus and of Adolphus & Ellis. They are not appropriate subjects for an analysis in the pages of a review, and it would require a very close and accurate criticism to show distinctly how far the mind of the particular judge can be traced in the course of the decisions of the whole court; how far he has aided in preventing the judgments of that court from degenerating into mere technical and unimportant distinctions, and

from narrowing rather than extending the scope of earlier decisions. Several of the written judgments of the court during the time when Lord Denman presided, were the preparation of Mr. Justice Patteson, and to them reference may be made for examples of his legal acumen and research. They will not in several particulars bear a comparison with the same class of judgments delivered by Baron Bayley or Baron Parke; there are deficiencies in the one which are not to be traced in the others; and there is sometimes a leaning towards precedent which cannot be borne out upon a strict examination or reasoning. What has been, is looked upon as a starting-place for further decision or a foundation on which superstructures may be placed, but the reason or propriety of the original decision is often left unquestioned; and what has not been at any time mooted or decided, is deemed to be contrary to law itself. Mistakes, or practice founded upon an erroneous basis, may have been made, or may have subsisted; and, because they have been so made, or have so subsisted, the assumption, unless the error be very patent, is that the practice has been well founded. This is obvious from the opinion given in the important case of *O'Connell and others v. Regina*, in error before the House of Lords in 1844 (*Clark & Finelly*, vol. 11). It will be recollected, that upon the questions, whether some of the counts of that long and extraordinary indictment, and whether some of the findings of the jury upon other counts, were or were not bad in law, the judges were unanimously of opinion that there were bad counts and bad findings; and then arose the question suggested for the first time by the ingenuity of Mr. Peacock, and argued with great force by him, whether a general sentence on the whole counts of the indictments, good and bad together, was sustainable on a writ of error. The objection had never before been taken in error; the practice had been uniformly in favour of a general sentence, and eleven questions were put to the judges, on two of which only, the third and the eleventh, they differed. The third question left to the judges was,—“Is there any sufficient ground to reverse the judgment, by reason of any defect in the indictment, or of the findings, or of the entering of the findings of the jury upon the said indictment?” This question, in fact, resolved itself into the same in substance as the eleventh, which ran thus:—“In an indictment consisting of counts A. B. C., where the verdict is guilty of all generally, and the counts A. and B. are good, and the count C. is bad, the judgment being that the defendant, for the offences aforesaid, be fined and imprisoned, which judgment would be sufficient in point of law if confined expressly to counts A. and B.; can such judgment be

reversed on a writ of error? Will it make any difference whether the punishment be discretionary * * or a punishment fixed by law?" Upon these questions the difference between the judges arose. Mr. Justice Coltman and Mr. Baron Parke agreed that the practice had been uniform in the courts below, and that sentence on such indictments had been awarded and carried out; but they examined most minutely the reason or supposed reason of the practice, and they came to the conclusion, which was adopted by the House in its judgment, that such a sentence was reversible on writ of error. The opinion of Mr. Justice Patteson was, that it was not so reversible. In delivering that opinion he said:—

"It seems to be argued upon this question, that there is so strict an analogy between a general verdict for damages in a civil action, where the declaration contains several counts, and a judgment upon an indictment which contains several counts, as that a court of error must act upon such analogy and apply the same rule in criminal cases as is usually applied in civil cases, viz., that one bad count is fatal to the judgment, not on that count, but on the good ones. That rule has been considered as a very inconvenient and bad rule by Lord Mansfield on several occasions; *Grant v. Astle, Peake v. Oldham*, and in other cases in which, as that of *Rex v. Benfield* and another, the same learned judge stated that the rule did not apply to individuals. Whether the rule is good or not, it is plain that in civil actions it is founded on the impossibility of the court, whose duty it is to pronounce judgment, being able to ascertain what judgment to give. The verdict of a jury, in order to have its full effect, must be followed by a judgment of the court; and if that verdict be uncertain the court cannot pronounce judgment at all. When a declaration contains several counts claiming damages the jurors must give some damages upon every count which they find in favour of the plaintiff; and if they do not apportion the amount of the damages separately to each count, and one be bad, it is obvious that the verdict becomes immediately uncertain, and no judgment can be pronounced; not for the whole damages, because it is plain that as to some part the verdict is wrong, but as to what part the court cannot tell, and therefore cannot give judgment for part; the judgment must therefore either be arrested or a *venire de novo* awarded. (*Lewin v. Edwards*.) But in criminal proceedings the jury merely find the party guilty or not guilty; they have nothing to do with the punishment, or with any thing at all analogous to assessment of damages in civil actions. The court is free to give judgment on the whole, or on part of the indictment, as the law may require, and no uncertainty can arise; therefore the reason for the rule in civil actions does not and cannot apply to criminal cases.

"But if on general principles and rules of law a general judgment on an indictment consisting of several counts, on all which the de-

defendants are found guilty, must be taken to apply in part to each count, and if the sentence pronounced is to be taken as the aggregate amount of several separate sentences, one on each count, then the analogy may hold, though the reason of the rule does not apply.

"I believe that this is the first time that any such notion has been suggested. Certainly the practice of all criminal courts has been to pass sentence generally on all cases of felony, whatever number of counts may be contained in the indictment; but then there is really but one offence, for although two or more distinct felonies may be joined in one indictment, yet in practice the prosecutor is usually put to his election to proceed on one only. I am not aware of any instance in which a writ of error, in a case of felony, has been brought on account of there being one bad count in the indictment. So in indictments for misdemeanors, if there is really more than one offence contained in the indictment, the prosecutor is not usually, as in felony, put to his election, but the defendant may be convicted for several offences. If he should be so convicted, it is most usual to pass sentence separately for each offence, that is, to give judgment separately, not on each count, but, so to speak, on each class of counts, treating them as if they were separate indictments. That course, however, is not always pursued; but one sentence is sometimes passed, where no greater punishment is inflicted than might be under any one of the counts, if it stood alone.

"If there be, in truth, but one offence, stated in various ways, the sentence is, I believe, invariably general. The universally received opinion has been, that one good count would sustain such general judgment. Lord Mansfield, in the cases I have alluded to, distinctly states it to be so, and no decision or dictum is to be found in the books the other way. Motions in arrest of judgment have, indeed, been made on account of the indictment containing one or more bad counts; but the courts have always refused the motion, and said that it was immaterial, as there was one good count; *Rex v. Rhodes* and another. It should seem, that in such instances the courts must have proceeded to give judgment in the general form commonly used, without confining it to the good count, because, having refused the motion, they have not even determined whether the count objected to was bad or not; and yet no one ever thought of bringing a writ of error upon such a judgment. No instance of such a writ of error is to be found. When there is a doubt at the assizes as to questions of the sort, judgment is usually respited; and where that is done, nothing can be inferred as to the present point. But there is one case, *Rex v. Hill*, in which sentence was passed at the assizes for a misdemeanor, and afterwards certain points were submitted to the judges, who held that one of the counts was bad; yet as the rest were good, it did not occur to them to recommend a pardon, which they ought surely to have done, if the sentence or judgment was reversible by writ of error. Looking at any record of conviction where there are several counts, and a general verdict of guilty

and a general judgment, a court of error cannot indeed tell whether, in point of fact, more than one offence was proved or not; and it may be assumed, for the purpose of this argument, that such court is bound to suppose that as many offences as there are counts were proved. Yet if the sentence be such as might be passed on any one count, there is no reason why the court of error should not consider that the court below has passed sentence on all the counts, indeed, in point of form, but applied the whole punishment to one offence, if there be but one, or to each offence if there be more than one; and not part of the punishment to the offence contained in one count, and part to that contained in another. This must be the case in capital cases, where there can be but one sentence of death, though there be many counts; and also in cases where, in the terms of your lordship's question, the punishment is fixed by law, and only one punishment is mentioned in the judgment; and I see not why it may not be equally so where the punishment is discretionary.

"If there be any question afterwards in a court of error as to the sufficiency of any count, surely that court is bound to suppose that the court below, not having given a separate judgment on each count, has given its whole judgment and passed its whole sentence in respect of each count? and then the judgment will rest and be supported on those counts which are properly constructed, and on which the defendant has been found guilty in due and proper form, notwithstanding there may be other counts which are bad; and that I understand to be the meaning of the words in the present judgment, 'for his offences aforesaid;' that is, for those offences which are properly charged and properly found against him, the whole punishment being for each offence, and the maxim of *utile per inutile non vitiatur* will fully apply."

Having answered the objections of hardship to the defendants from their not being able on any future occasion to plead autrefois convict, and the possibility of a pardon for one or more of the offences, and the defendants not knowing how much of the judgment was thereby remitted; and having referred to the case of *Young & others v. Reg.* as an authority that one good count in an indictment would sustain a judgment notwithstanding other bad counts, and to the case of *Rex v. Powell*, as strong presumptive evidence that the defendants' doctrine was not right, and as at all events showing what had hitherto been the received opinion and practice on the subject, he thus concluded:

"For these reasons I am of opinion, that a judgment given under the circumstances stated in the question lastly proposed by your lordships cannot be reversed on a writ of error, and that it makes no difference whether the punishment be discretionary or fixed, and I think that the same reasoning applies to the third question, not

only as to that part of it which relates to defects in the present indictment itself, but to that part which relates to defects in the findings of the jury. Assuming the judgment to be bad as regards the first, second, third, sixth, and seventh counts of the indictment, by reason of the defects of the findings on the first, second, and third counts, and by reason of the defects in the sixth and seventh counts themselves, still it remains an entire and good judgment on the other counts of the indictment, and cannot be reversed."

The opinion thus given aptly illustrates the peculiar opinions of the learned judge. Others might and did take a wider view, and did criticise the supposed reason for the practice which had so long obtained, but that was not within the bent of his judicial mind. It is manifest that, in many respects, there is a close affinity between Mr. Justice Patteson and the learned chief justice, whose opinion is cited with confidence in the case we have just quoted—Lord Mansfield. He has shown the like power in creating out of unimportant decisions on subjects, which have been heretofore of little importance, a system of law adapted to the immediate wants of society; and that system is remarkable for the good sense and simplicity of its practice; but he has never, like Lord Mansfield, leaned towards equitable principles in his decisions. He has been aware, indeed, of the "anomalous scheme of the English law, and the expense and injustice which frequently arise from compelling a party, who is clearly entitled to redress, to seek it in another form;" but he has evidently felt that he was appointed to administer the law in a particular branch, and he has left it for the legislature to say "whether the preservation of the exact boundaries between the tribunals of the common law and of equity are wisely preserved at such a cost." To its fullest limits, however, he has been prepared, and has extended the jurisdiction of the Court of Queen's Bench; to the extent even of declaring that a court of law was competent to decide whether the House of Commons had or had not one of its asserted privileges—of publishing such of its reports, votes and proceedings as it shall deem necessary or conducive to the public interests.

In the second case, of *Stockdale v. Hansard* (9 Adol. & Ell. 1), the House of Commons and the Court of Queen's Bench came into direct collision on that important point, and the judgment of Mr. Justice Patteson was firm, clear and explicit on the three questions which arose from the record; viz., 1st. Whether an action at law will lie in any case for any act whatever admitted to have been done by the order and authority of the House of Commons? 2ndly. Whether a resolution of that House,

declaring that it had the power to do the act complained of, precluded the court from inquiring into the legality of the act? and 3rdly, If such resolution did not preclude the court from inquiring, then whether the act complained of was legal or not? Upon the answer to the first two questions rested the whole authority of the House of Commons. The first point was in substance conceded, at any rate it was not pressed, in the course of the argument; if the act were in itself illegal, and since as there is no wrong without a remedy, and as there could be no such remedy but by an action in a court of law against those who had done the injury, it seemed to Mr. Justice Patteson very difficult to maintain the affirmative of the second question; and, as he fairly put it, if the doctrine be true that the House, or rather the members constituting the House, are the sole judges of the existence and extent of their powers and privileges, he could not see what check or impediment existed to their assuming any new privileges which they might think fit to declare. Some mode of ascertaining whether the powers and privileges so declared were new or not must surely be found; and if it were conceded that the courts of law, when that question arose before them, might make the inquiry, then the doctrine of the resolution, precluding inquiry by the court of common law, must fall to the ground. But it had been argued that the point must be ascertained by a reference to "public opinion." "I cannot find," said the judge, with no little and no misapplied sarcasm, "in the common law or statute law, or in any books of authority whatever, any allusion to such reference, and indeed what tribunal could be conceived more uncertain, fluctuating and unsatisfactory, than public opinion? It is even difficult to define what is meant by the words 'public opinion.'" Public opinion, indeed, is often quoted and still oftener invoked, but it would puzzle the most acute logician to define what it was. The late chairman of the Board of Customs was once told that certain suggested changes were required by "public opinion," and he posed the suggestor by gravely stating, that he did not know what public opinion meant, or where he was to find it; he sat there to administer certain laws passed by the legislature, and till the legislature told him what they intended him to do, he could not understand how public opinion, so called, was to be judicially taken notice of. Well also did Mr. Justice Patteson in his judgment vindicate the dignity of his office in refutation of the argument, that the courts of law could have no knowledge or means of knowledge of the law and custom of parliament, whilst at the same

time it was said that they were part of the law of the land, and the court in that very case was called upon by the defendants to pronounce judgment in their favour, upon the very ground that their act was justified by that very law and custom of parliament, of which the court was said to be invincibly ignorant, and to be bound to take that law from a resolution of one branch of the parliament alone. "In other words," said the learned Lord, emphatically declaring his own sturdy independence, "we are told that the judgment we are to pronounce, is not to be the result of our own deliberate opinion on the matter before us, but that which is dictated to us by a resolution of the House of Commons, into the grounds and validity of which resolution we have no means of inquiring, and indeed are forbidden by parliamentary law to inquire at all. I cannot agree to that position. If I am to pronounce a judgment at all, in this or in any other case, it must and it *shall be* the judgment of *my own mind*, applying the law of the land as I understand it according to the best of my abilities, and with regard to the oath which I have taken to administer justice truly and impartially." He concluded the answer to the second question by saying, that—

"Upon the whole, the true doctrine appears to me to be this: that every court in which an action is brought upon a subject-matter generally and *prima facie* within its jurisdiction, and in which, by the course of the proceedings in that action, the powers and privileges and jurisdiction of another court come into question, must of necessity determine as to the extent of those powers, privileges and jurisdiction: that the decisions of that court, whose powers, privileges and jurisdiction are so brought into question, as to their extent, are authorities, and, if I may so say, evidences in law upon the subject, but not conclusive. In the present case, therefore, both upon principle and authority, I conceive that this court is not precluded, by the resolution of the House of Commons of May, 1837, from inquiring into the legality of the act complained of, although we are bound to treat that resolution with all possible respect, and not by any means to come to a decision contrary to that resolution unless we find ourselves compelled to do so by the law of the land, gathered from the principles of the common law, so far as they are applicable to the case, and from the authority of decided cases, and the judgments of our predecessors, if any be found to bear upon the question."

And then, passing to the third question, he declared that, beyond all dispute, it was necessary that the proceedings of each House of Parliament should be entirely free and unshackled, that "*whatever is done or said in either House should*

not be liable to examination elsewhere; and, therefore, that no order of either House could be treated as a libel;" but he drew a distinction between what was done within and what was done without the House: and thus ended the most closely reasoned of all the judgments of the judges:—"Whether any individual member might or might not be justified in communicating to some persons out of the House defamatory matter printed for the use of the House, I cannot pretend to say. Probably, upon any such question arising, the decision will lie with a jury; I would by no means bind myself to any opinion on that subject. This is the case of an open sale to all who choose to buy, not justified by any peculiar circumstances attending this case above others. Where, then, is the necessity for this power? Privileges—that is, immunities and safeguards—are necessary for the protection of the House of Commons in the exercise of its high functions. All the subjects of this realm have derived, are deriving, and, I trust and believe, will continue to derive, the greatest benefits from the exercise of those functions. All persons ought to be very tender in preserving to the House all privileges which may be necessary for their exercise, and to place the most implicit confidence in their representatives as to the due exercise of those privileges. But power, and especially the power of invading the rights of others, is a very different thing: it is to be regarded, not with tenderness, but with jealousy; and, unless the legality of it be most clearly established, those who act under it must be answerable for the consequences. The onus of showing the existence and legality of the power now claimed lies upon the defendants: it appears to me, after a full and anxious consideration of the reasons and authorities adduced by the Attorney-General in his learned argument; and after much reflection upon the subject, that they have entirely failed to do so; and I am, therefore, of opinion that the plaintiff is entitled to our judgment in his favour."

The right course was ultimately adopted. An act of parliament was passed by which proceedings, civil and criminal, against persons for publication of papers printed by order of either house of parliament, are to be stayed by order of the courts, upon delivery of a certificate and affidavit that such publication is by order of either house of parliament.

There were other questions of constitutional law raised in the court about the same time, among which was the case of the Canadian prisoners, reported as *Leonard Watson's* case; but Mr. Justice Patteson was not sitting in banco, and the decisions

were given by his colleagues ; and he was no party to the judgment of the Queen's Bench in the subsequent case of Howard v. Gosset, against the validity of the Speaker's warrant for taking Howard into custody, which judgment was reversed by the Court of Exchequer Chamber.

Throughout his whole career, Sir John Patteson's temper, moderation, patience and impartiality have been most conspicuous — "*Etiam contra quos statuit, æquos placatosque dimisit.*" He has held the scales of justice perfectly even ; and the public, no less than the profession, will regret the removal, owing to a physical infirmity, of an honest, an upright, and a most courteous Judge.

C.

Notes of Leading Cases.

EQUITY.

JUDGMENT DEBT A CHARGE UPON THE BENEFICE OF A CLERK UNDER THE 1 & 2 VICT. c. 110, s. 13.

Hawkins v. Gathercole, 1 Sim. (N. S.) 63.

BEFORE the recent act, the only process by which a judgment debt could be enforced against the benefice of a clerk not having lay property, was by the intervention of the bishop of his diocese. The ordinary writs of execution were inapplicable. Lands could not be touched under an *elegit*, for "*elegit* does not lie of the glebe lands of a parson or vicar, no more than of a church yard: *est solum Deo consecratum*." (*Jenkins*, Rep. 207; *Gilbert on Executions*, 40). Tithes, rents and profits could not be touched under a *fieri facias*, or a *levari facias*, for they were *bona ecclesiastica*, and as such secure from the lay hands of the sheriff. "If," says Lord Coke, "a parson be bound in a recognizance in the chancery, or in any other courts, and he pay not the sum at the day, by the common law if the parson had nothing but ecclesiastical goods, the recognissee could not have had a *levari facias* to the sheriff to levy the same of those goods, but the writ ought to be directed to the bishop of the diocese to levy the same of his ecclesiastical goods." (2 Inst. 4.) "Where it appears by the pleading that a clergyman is defendant, or, by the sheriff's return upon a *fieri facias*, '*quod est clericus beneficiatus non habens laicum feodum*,' a *levari facias* shall issue to the bishop to levy the debt, damages and costs, as the case requires." (*Jenkins*, Rep. *ubi supra*.) "We have, therefore," says Lord Alvanley, after a review of these and other authorities, "complete authority for saying, that at common law no process ever issued to a sheriff to levy on ecclesiastical property the debt due in an action; and *Gilbert* is well warranted in saying that no *elegit* lies." (*Arbuckle v. Cowtan*, 3 Bos. & Pull. 322.)

By the 13th section of the act, 1 & 2 Vict. c. 110, a judgment is made to operate as a charge upon lands, tenements, rectories, advowsons, *tithes*, rents and hereditaments, and the act provides that every judgment creditor shall have the same remedies in a

court of equity against the hereditaments charged by virtue of the act, as he would be entitled to in case the debtor had power to charge the hereditaments, and had, by writing under his hand, agreed to charge the same with the amount of the judgment and interest. Now although the act expressly mentions rectories and tithes, those terms were not deemed sufficiently explicit, and a question arose whether they were not employed by the legislature in the sense in which rectories and tithes can be held by laymen, and so as to exclude from the operation of the act benefices with cure of souls. The profits of benefices with cure of souls were at all times liable to be sequestered, but sequestration required the intervention of the bishop. Did the act then supersede sequestration, dispense with the assistance of the bishop, and enable a judgment creditor to recover his debt by the aid of a court of equity? In a word, did the legislature intend by the act to place judgments against ecclesiastical persons on the same footing as judgments against laymen?

In the case before us Lord Cranworth, V. C., decided that it did. The facts in that case were these:—The defendant, a clergyman, having in 1845 made a mortgage in fee to the plaintiff of an advowson, by way of further security executed a warrant of attorney, on which a judgment was entered up and registered. Shortly after the date of the mortgage deed, the defendant presented himself to the living. In September, 1849, the interest on the mortgage debt being in arrear, the plaintiff issued a *fi. fa.* for the recovery of the arrear; and in November following, in consequence of the sheriff being unable to levy the whole of the arrear, issued a writ of sequestration to the bishop in the usual form. He afterwards filed his bill against Gathercole, the bishop, and certain subsequent judgment creditors, who had also issued sequestrations, to have it declared that the plaintiff was entitled to be paid his mortgage debt and interest in priority to the defendants' judgments; and that the plaintiff's judgment became and was a charge upon the vicarage, advowson, tithes, rents, hereditaments and premises against them; and praying that the bishop might be restrained from executing the defendants' sequestrations, and that they might be restrained from procuring their sequestrations to be issued, and for a receiver of the rents, tithes and rent-charges belonging to the vicarage. Upon motion for a receiver and injunction as prayed, it was contended, on behalf of the defendants, that the act 13 Eliz. c. 20, made it unlawful for a clergyman to charge his benefice; that the 13th section of the act 1 & 2 Vict. c. 110, did not, even by implication, repeal the act of Elizabeth, inasmuch as that section, though it mentioned rectories and tithes, which were often held by laymen,

did not contain the words "benefices with cure of souls," which were essential to distinguish such property as the present. It was still unlawful for a clergyman to charge his benefice, and therefore it was quite clear that a judgment was not made a charge on his benefice; and even if it were such a charge, the plaintiff had no right to apply for a receiver; for his judgment had the priority, and he by means of his sequestration was in possession of the profits of the benefice.

Lord Cranworth, after stating his opinion that upon all the authorities it was perfectly competent to the plaintiff to give the warrant of attorney without bringing himself within the provision of the statute of Elizabeth, continued, in effect, as follows:—"The plaintiff says—'Independent of my sequestration, I have really, and as the foundation of the sequestration, obtained a valid judgment against my debtor. By the 13th section of the act, the effect of that judgment is, that I had, as against the profits of this living, the same right as if Gathercole had had power to charge the living, and had actually charged it; and having that right, I seek to make it available in the only way in which it can be made available, namely, by getting what, perhaps, is properly enough called an equitable execution, that is, by getting a receiver.' It is said that it could not have been within the contemplation of this statute to authorize a party to charge that which previously he was incompetent to charge. I entirely accede to that argument, if the meaning of it is that the act did not authorize him to charge it in the ordinary sense of creating a charge by deed or contract; but I do not accede to it at all, if it is meant that the law will not charge it for him, when that is done which the law says shall give to the party the effect of a charge. What right have I to speculate on what the legislature meant, when it is as clear as words can make it? But if I did speculate, I should not in the least doubt (whether this particular case was in the contemplation of the legislature I know not) that the object was to make all property, that by any process of execution can be made available to satisfy creditors, available to them by creating a charge upon it, the benefit of which they are to obtain in the ordinary way in which property charged can be made available." It was, accordingly, referred to the Master to appoint a receiver, and it was ordered that the receiver should provide for the service of the church, and make and pay a proper allowance and remuneration to the persons serving the same, and that injunctions should be awarded against the defendants, the bishop and the judgment creditors, as prayed by the bill.

To this decision two objections have been raised; first, that it makes the recent act repeal the act of Elizabeth, which provides

that all chargings of any benefice or ecclesiastical promotion with any pension shall be utterly void; secondly, that the legislature could not have intended to transfer to the officers of a lay tribunal a jurisdiction which, for the benefit of the church, was intrusted to the bishop.

With respect to the first objection, it does not follow from Lord Cranworth's decision that the act of Victoria has repealed the act of Elizabeth. The latter act prohibits ecclesiastical persons from charging their benefices. Lord Cranworth has not decided that this prohibition is removed. On the contrary, he expressly denies that the act of Victoria authorizes an ecclesiastical person to create such a charge in the ordinary sense of creating a charge. He decides, indeed, that, under the act of Victoria, the law will charge it for him; but so interpreted, the act introduces no new principle. Previous to the act, the law enabled a judgment creditor to reach the profits of a living. It does so still, with this difference, that the act gives him a speedier and surer remedy. It was well settled that the act of Elizabeth did not prevent a creditor from enforcing payment of a debt by sequestration; consequently, that, under a judgment given by a clergyman to secure an annuity, the annuitant, though he obtained no lien on the benefice, might from time to time have a sequestration for the arrears. (*Faircloth v. Gurney*, 2 Moo. & Sc. 822; *Colebrook v. Layton*, 4 B. & Ad. 578.) Notwithstanding the statute of Elizabeth, benefices with cure of souls were always liable to sequestration for debt. They are now liable to debts without sequestration. The new remedy creates no new right; it is only a shorter and surer road to an existing right.

The only remaining objection relates to the substitution of the Court of Chancery for the bishop, and this also is unfounded. The sole advantage of employing the bishop was to provide a security that, in the first instance, and before any portion of the profits of the living were applied towards satisfaction of debts, a sufficient portion should be set apart for the service and requirements of the church, as being a charge paramount to the beneficial interests of the incumbent. The instrumentality of a Court of Equity does not diminish that security. Equity will not enforce the judgments without providing, in the first place, for all pre-existing charges and equities (*Whitworth v. Gaugain*, 1 Phill. 728), and first and foremost, for the service of the church. Under the old system, the mandate of sequestration, addressed by the bishop to the churchwardens, directed them to collect the profits of the benefice, and after payment thereof for the offices of the church, to pay over the surplus to the judgment creditor. The

order in *Hawkins v. Gathercole* was, that the receiver should provide for the service of the church, and make and pay a proper allowance and remuneration to the persons serving the same; the right of the bishop to disapprove of such persons remaining of course unprejudiced. The service and requirements of the church are, therefore, notwithstanding Lord Cranworth's judgment, as amply secured as ever they were.

SETTLEMENT—MONEY TO BE INVESTED IN LAND—REAL OR PERSONAL ESTATE—ELECTION.

Harcourt v. Seymour, Seymour v. Lord Vernon, 20 Law J. Chanc. 606.

ONE of the consequences of the principle of equity which gives effect to intention, by considering that as done which ought and was intended to be done, is, that real and personal property, when directed to be changed one for the other, lose their respective distinctions, and become clothed with the characteristics of that class of property to which they do not yet actually belong. This doctrine is, however, subject to the right of any person to whom property so impressed with a character alien to its existing nature may devolve, to elect to take it such as it is, and where such election is expressly made no doubt can arise. But it often happens that those to whom such property comes take it, and deal with it, without any specific views as to its nature, not thinking of making an election, and perhaps ignorant of the law and of their power to do so. It then becomes a question from what circumstances such an election is to be inferred, and the present case clearly illustrates the rule upon this point, and affords a rule for the solution of similar difficulties.

The material facts, stated as briefly as possible, were these: In Lord Harcourt's marriage settlement in 1778 certain trustees were directed to invest 32,000*l.* then settled, with the consent of Lord Harcourt and his intended wife, or the survivor of them, in the purchase of landed estates, to the use of Lord Harcourt for life, and, subject to certain terms of years for raising different sums, after his decease to the use of his right heirs for ever. For many years the money remained without being invested in land, and was dealt with by Lord Harcourt in the same manner as the rest of his personal property; and after his decease in 1830 it was always considered as such up to 1834, when W. Bernard Harcourt, residuary legatee of the countess (to whom Lord Harcourt had devised his *personal* estate), contracted to purchase an estate on the strength of the 32,000*l.* then, as he believed, in the hands of Lord Harcourt's executors. It was then for the first time suggested that the said sum had in fact the nature of real estate,

and after two opinions had been taken, W. Bernard Harcourt did divers acts treating it as real property; amongst others, conveying the estate purchased as above mentioned to the trustees of Lord Harcourt's will. It was after his death intestate in 1846, that facts were disclosed, tending to show that Lord Harcourt had elected to take the said sum *as personality*. The plaintiffs in the first suit were the trustees of Lord Harcourt's will; in the cross suit, the three infant daughters of W. Bernard Harcourt. The defendants were the devisees of Lord Harcourt, and also the mother of the plaintiffs.

For the last-mentioned plaintiffs, it was contended that no real quality was impressed on the fund by the settlement, and that the acts of Lord Harcourt at different times showed that he had elected to take it as personality. With regard to the first point, Lord Cranworth, V. C., in giving judgment, said,—“The law was perfectly clear. When by a settlement land has been agreed to be turned into money, or money into land, a character is irrevocably impressed upon it, until somebody entitled to take it in either form chooses to elect that, instead of being turned into money or land, as the case may be, it shall remain in the form in which it actually finds itself.” That Lord Harcourt had so intended to elect he considered “incontrovertibly” proved, first, because Lord Harcourt in his will left 80,000*l.* to be *invested in land*, without any mention of the 32,000*l.* in question; secondly, because in a document in his own handwriting, entitled “A statement of my property,” which property appears by internal evidence to have been *wholly personal*, he *includes* this 32,000*l.*; thirdly, because 20,000*l.* out of the said sum having been put out on mortgage, shortly before his death he executed a transfer of the same, with a clause *by which it was not to be called in for five years*. There are besides extracts from bankers' pass-books, &c. leading to the same conclusion. The judgment therefore was that the 32,000*l.* passed as personality under Lord Harcourt's will, and the deeds executed by William Bernard Harcourt were set aside as executed under a misapprehension.

By this the very important point was established, that it is not necessary for the party beneficially interested in money or land, settled as above, *expressly to declare* his intention to *convert*, if the circumstances go to prove that it was his *wish* to do so, or that he believed that he had done so; or as Lord Cranworth said, “It is quite sufficient if the court sees that the party means it to be taken in the state in which it is actually found.”

We may remark that a deed of mortgage, *wrong* as to an important recital, was here admitted as proof strongly bearing on the equity of the case.

●

JOINT-STOCK COMPANIES WINDING-UP ACTS—PROVISIONAL COMMITTEE-MAN—CONTRIBUTORY.

In re the Direct Exeter, Plymouth and Devonport Railway Company, Ex parte Besly, 3 M.N. & G. 287; 15 Jur. 523.

IN a former paper¹ under this title we noticed the judgments of the Lords Commissioners in *Ex parte Roberts* and *Ex parte Cottle*, relative to the non-liability of mere provisional committee-men to be made contributories to a dissolved company. At the date of that paper the law on this subject was in a state of much uncertainty, Lord Cottenham having in the case named at the head of this article, by one of the latest of his judgments, laid down a doctrine directly at variance with the rule adopted at law.

Since the date of the paper referred to, in consequence of the conflicting decisions subsequently pronounced by the Lords Commissioners and the House of Lords, the cause has been reheard by the great seal, and Lord Truro has delivered a judgment, of which we now propose to give an outline.

It may serve incidentally, as an illustration of the previous uncertainty of the law, to premise that the official manager had included in his list of contributories the name of Mr. Besly, on the ground that he had been a member of a provisional committee appointed to establish the projected company; that the Master had ordered his name to be retained; that the Vice-Chancellor (Knight Bruce) had ordered his name to be removed from the lists, and that Lord Cottenham, reversing the order of the Vice-Chancellor, had ordered the same name to be restored to the list, and the costs of the application to be paid by Mr. Besly; and now, under special circumstances, the cause came on for a second rehearing by the great seal.

Lord Truro said, in considering the question whether Mr. Besly was rightly placed on the list of contributories to the payment of the debts contracted by the persons engaged in the endeavour to establish the projected company, it was proper to ascertain the grounds upon which Mr. Besly *would* become legally or equitably liable to be placed on such list; and those grounds were either that he was liable to the creditors of the projected company, or that he was liable to contribute to the indemnity of those persons who were liable to the creditors of the projected company.² Mr. Besly must become liable to the creditors by having personally contracted with them, or by his having given authority to those who did contract with the

¹ 14 L. M. 126.

² See *Hutton v. Thompson*, since decided, and reported 3 H. L. C. 161.

creditors to pledge his credit. *He could in no other way become subject to any liability to the creditors.* The liability to contribute towards the indemnity of those persons who did incur a liability to the creditors, must also result from a contract with them, express or implied from his conduct. In this case the determination must depend upon the application of principles perfectly recognised in the courts of law and equity. His lordship then went into the facts, which were briefly these: Mr. Besly had consented to be nominated a provisional committeeman, and had been nominated accordingly. He had afterwards desired his name to be withdrawn, and declined all connexion with the projected company. Did these facts, standing alone, confer any authority on the provisional committee to contract on his credit? His lordship held that they did not; and it was not pretended that Mr. Besly had ever personally contracted with the creditors either expressly or by implication. On the other hand, he had never authorized the publication of a prospectus containing his name; he had never had notice of the publication of any such prospectus; and no such prospectus had been registered, registration being essential to the due publication of the prospectus. With respect, therefore, to the first question, his lordship held, in conformity with the doctrine distinctly laid down in *Reynell v. Lewis*, and *Wyld v. Hopkins*, 15 M. & W. 517, that the facts shown afforded no ground upon which Mr. Besly could have been rendered liable at the suit of any creditor. Then with respect to the question, whether Mr. Besly had ever expressly or by implication entered into any contract to indemnify those persons who were liable to the creditors, what were the facts: his conduct before the debts were contracted was limited to consenting to his name being on the provisional committee, and that at a time when it was uncertain whether any company would ever be established, or if established whether it would be prosecuted. On the other hand, he did not know how many persons composed the committee; he never professed any intention to take shares; and when it was proposed to him to do so, he immediately declined. So far, then, as regarded the facts occurring previously to the abandonment of the concern, there was no principle of law or equity which made his consent to be nominated a provisional committeeman operate as a contract with the committee to contribute to indemnify them in respect of debts contracted by themselves. With respect to the facts subsequent to the abandonment of the scheme, they were—that Mr. Besly had attended meetings at which it was agreed to pay certain sums, and that he had afterwards paid those sums; but such payments were

made in ignorance of the fact that the committee of management had acquiesced in his application to have his name removed from the list of the provisional committee, a fact which the secretary ought to have communicated, but had not communicated, to him; and such payments were made upon the faith that no further claim should be made upon him. Upon these facts, the court was of opinion that Mr. Besly, not being liable either to the creditors or to the committee before the scheme was abandoned, the partial payments, whether made under a supposed liability which did not exist, or, *causa pacis*, did not create a liability to make further payments. On these grounds his lordship held that Mr. Besley was not properly on the list of contributories, and the order of Lord Cottenham, placing him there, was discharged.

By this judgment the state of the law relative to the liability of persons who have merely consented to be nominated as members of a provisional committee of a projected company, is rendered consistent and intelligible; and it may now be taken as certain, consistently with *Ex parte Roberts* (2 Mac. & G. 196; S. C. 14 Jur. 655) and *Ex parte Cottle* (2 Mac. & G. 185; S. C. 14 Jur. 655) to which we may add Carmichael's case (17 Sim. 163; S. C. 14 Jur. 1014), that equity will follow the rule of law as laid down in *Reynell v. Lewis* and *Wyld v. Hopkins*, viz. that the mere fact of a person agreeing to become a member of the provisional committee of an intended company, amounts to no more than a promise to act with others appointed or to be appointed for the purpose of carrying the scheme into effect, and does not confer an authority on the other members of the committee to make contracts pledging his credit.

RESTRICTIVE COVENANTS—TRADE OR CALLING—GIRLS' SCHOOL —NUISANCE.

Kemp v. Sober, 20 Law J. (Chanc.) 602.

THIS is a case of some importance, although the point it decides is neither abstruse nor complicated, because it fixes another step in the application of a very common covenant. Not only in the case of a lease, is it now often the case that the lessee is bound, but also in case of sale, in neighbourhoods which it is wished to keep exclusively devoted to private dwellinghouses, purchasers are likewise bound, among other restrictions, not to use the premises as a shop, or to carry on any trade, business or calling therein, nor in anywise suffer them to become a nuisance. At the same time, nothing is more common than to

find the very class of houses to which these covenants relate used as schools for girls.

In the present instance, a vendee of a house, who had entered into such a covenant in respect of it, subsequently let it for the purpose of being used as a girls' school.

The interference of the court to restrain any further breach by injunction having been sought for, Lord Cranworth, V.C., thought that this keeping a girls' school was carrying on a calling within the meaning of the covenant. In *Doe d. Bish v. Keeling* (1 Mau. & S. 95) a boys' school was held to be such, and his lordship professed himself unable to distinguish between the two. Singularly enough, the next two houses had been let by the vendor (as also others in the same place) for the same purpose, and a point was made as to this being a waiver of the right to enforce the covenant. But the case was clearly distinguishable from the principle of *The Duke of Bedford v. British Museum* (2 My. & K. 552), as there the nature of the property was *permanently* altered, both parties having built upon open ground, while here the departure of a school replaced matters in *statu quo*.

A doubt might still arise if, where a boys' school is expressly covenanted against (as it frequently is), a girls' school would still be within these general words in the same covenant.

COMMON LAW.

PATENT—NOVELTY—COMBINATION—APPLICATION.

Steiner v. Heald (in error), 20 Law J. (Exch.) 410; *Sellers v. Dickenson*, *Ib.* 417.

WERE invention in its infancy, and patents chiefly given for discoveries new in every part, their validity would scarcely come in question, except for the decision of a jury as to the novelty of the invention upon the disputed facts of each particular case. But now, when stimulated by competition and growing requirements discoveries are multiplied, inventions new in every part are (to use the words of a learned judge) a novelty very rarely met with, "the more general subject of a patent is some new combination or new application." Accordingly, difficult, sometimes very difficult, questions have arisen as to what amounted in law to that novelty in an invention which is required to make it the subject of a patent. The present cases afford apt illustrations of the main branches of the question.

In the latter case the patent was granted for a combination of

mechanism in power looms, whereby the whole of the working parts of the loom were instantly stopped whenever the shuttle did not come home to the shuttle-box. This was effected chiefly by the instrumentality of a well-known contrivance for taking off the power called a clutch-box. The fly-wheel was stopped by means of a break, for which purpose various breaks had been used before, but not in connection with the clutch-box. The inconvenience of the old methods of throwing the machine out of gear was, that they were accompanied by a severe shock or concussion, which was often productive of damage. In the plaintiff's scheme not only was this shock diverted from damaging the loom, but it was actually made available for stopping the fly-wheel by means of the break; and so beautiful was its action, that the force applied to the break, by a natural regulation, increased and diminished as the momentum of the fly-wheel, which it was requisite to destroy, was greater or less. This happy combination was adequately described and claimed in the specification, and found by the jury to be novel and useful, and the first point as to the plaintiff's right to the combination was decided in his favour by the court; but as to the infringement by the defendant, there was some difficulty. The defendant had himself procured a patent for a method of obtaining the like result, and his method was found by the jury to be substantially the same as the plaintiff's. The only differences were that, instead of using the clutch-box, he employed another plan, also well known, of throwing off the strap by means of "the frog," and that the connection with the break was not attained in precisely the same manner.

Hereupon the defendant's counsel, while admitting that there might be a good patent for a new arrangement of old mechanism, objected that there could be no infringement of such a patent, except by making use of the whole combination. The court, however, decided against the objection. "I think," said Pollock, C. B., "it may be laid down as a general proposition, that if a portion of a patent for a new arrangement of machinery is in itself new and useful, and another person, *for the purpose of producing the same effect*, uses that portion of the arrangement, and substitutes for the other matters combined with it another mechanical equivalent, that would be an infringement of the patent."

This is in exact accordance with the decision in the very late case of *Newton v. The Grand Junction Railway Company* (20 Law J. Exch. 427.) There the invention patented was the avoiding the heating and abrasion of the boxes for the axles of railway cars and locomotives, and for various other parts of

machinery, by lining such boxes with soft metal. The specification pointed out the best way of effecting this, accompanied by a mechanical contrivance for keeping the soft metal in its place in spite of the pressure. The defendants attained the result by means of a somewhat different description, using only one soft metal instead of two, as suggested in the specification. There, too, the argument that the same criterion was to be applied to the question of infringement as to that of novelty was held to be a fallacy. "In considering whether the invention is new," says Alderson, B., "the proper mode is to see whether the matter claimed as a whole is new. Now the whole, which may be claimed as new, may consist in some degree of old parts and in some degree of new parts," in which case the *combination only* of the old parts must be claimed at the peril of the validity of the patent. "But as to the infringement," adds the learned judge, "the question is altogether altered, because where the invention consists partly of what is old and partly of what is new, the combination is the subject of the patent. Therefore a person cannot infringe that part of the patent which is old, because the public cannot be prevented from using that which they had before used in that state." But if an individual used the new part of the patent, or the new combination of the old parts, or a mere colourable substitution for it, then the court held that that would clearly be an infringement.

In the other case, of *Steiner v. Heald*, the point was this,—the patent was for obtaining a valuable substance called garancine from spent madder. Spent madder was what remained of fresh madder after it had been used for dying calico. It was formerly known to retain some colouring matter, but was useless, though now very valuable by reason of the plaintiff's discovery. Garancine, as obtained from fresh madder by a certain process, which exhausted all the colour, was brighter than madder dye, and was a well known article. The patentable invention, if any, was the application of the new process to spent madder. Now it is laid down in text books, and may be taken to be clear (see Hindmarch on Patents, p. 161) that a mere application of a known invention is not patentable. The well known case of *Ray v. Marshall* (5 Bing. N. C. 494; 8 Cl. & F. 34) decided that because a mode of spinning flax at a short reach (as previously used in cotton spinning) was claimed, the patent was bad, although, in consequence of another part of the invention, flax was then for the first time susceptible of being spun in that manner. On the trial of the present case a verdict was directed for the defendant, upon issues raising the question

of the patentable nature of the invention and the novelty of the manufacture.

This ruling was held by the Court of Exchequer Chamber to have been a misdirection. "We are all of opinion," said Patteson, J., in delivering the judgment of the court, "that there must be a *venire de novo*." Having gone through the facts, and observed that here was no new contrivance, neither was there a new product, his lordship proceeded to expound the law as follows,—“If, therefore, the patent be good, it must be on account of the old contrivance being applied to a new object under such circumstances as to support the patent. Now spent madder might be a very different thing from fresh madder in its properties, chemical and otherwise, or it might be in effect the same thing, with the difference only that part of its colouring matter had been already extracted.” Their properties might be so far known to chemists as to enable them to say whether they were or no substantially the same. “These points,” added the learned judge, “appear to us to be questions of fact, and material to affect the validity of the patent;” and as they ought to have been left to the jury as conclusions to be inferred from the evidence, the learned judge was wrong in treating them as conclusions to be drawn as matters of law.

Now, whether spent and fresh madder are identical or not, it was treated as clear that a patent of this kind might be good. “Can you maintain the proposition,” asked the court, “that if a party discovered that by applying to potatoes the process used for obtaining garancine from madder he could obtain a valuable colouring matter, that he could not obtain a patent for it?” In that case, indeed, a new product is suggested; but this case would clearly support a patent for obtaining garancine by the known process for madder from potatoes; if it were otherwise, the misdirection would have been immaterial.

It would seem, therefore, that the proposition, that a patent cannot be granted for an application must either be somewhat modified, or at all events understood in its most restricted sense; that is to say, where the application really involves *no invention or discovery, but is a mere adaptation*, as where something similar or equivalent, and already known as such, is substituted for the subject-matter or product in a known process; as if any one were to apply Baxter’s process of printing in oil colours to linen, vellum or ivory, and seek to patent the change as a new invention. Where, however, there is a substantial discovery of a fact, neither actually nor virtually known before; if, for instance, by the application of the process now used to madder, some other substance, not already known to be in its properties an equivalent,

were found capable of yielding garancine, then that a patent for the so obtaining it would be valid seems agreeable enough to common sense, and is supported by the authority of this decision of a court of error.

**NEWSPAPER—DEFINITION OF—WHEN LIABLE TO STAMP DUTY
UNDER 6 & 7 WILL. IV. c. 76, SCHED. A.**

Attorney-General v. Bradbury, 21 Law Jour. (Exch.) 12.

MANY persons have in all probability felt a difficulty in ascertaining, by a reference to the various acts of parliament, what were the peculiar characteristics which must combine in order to constitute a newspaper, and that the question is not free from doubt is proved by the express admission of one of the learned judges, and still more by the fact of the court not being unanimous in its opinion. The facts upon which the question was raised in the present case were these: the defendants were the publishers of a companion or adjunct to Mr. Charles Dickens's *Household Words*, intituled "The Household Narrative of Current Events," and appearing without a stamp at intervals of more than twenty-six days, at a less price than sixpence. Its dimensions were not exceeding two sheets of the size specified in the statute, and it was printed for sale and sold in the usual way. Upon an information filed against them for penalties in respect of the *Household Narrative* as an unstamped newspaper, that publication was thought by Parke, B. liable to the stamp duty, while Pollock, C. B., Platt, B. and Martin, B., held that it was exempt.

It is by the 10 Anne, c. 19, that newspapers were first made liable to a duty under the description of "newspapers, or papers containing public news, intelligence or occurrences, printed to be dispersed or made public," and the same language was contained in the statutes which have renewed that temporary act, and is to be found in almost the identical words as the first definition of a "newspaper" in the schedule of the existing act 6 & 7 Will. IV. c. 76; and in that schedule are to be found other definitions of what shall be deemed a newspaper, the third of which is, "*and also any paper containing any public news, intelligences or occurrences, or any remarks or observations thereon,*" printed for sale and "published periodically, or in parts and numbers, at intervals not exceeding twenty-six days between the publication of any two such papers, parts or numbers, where any such paper, &c." should contain less than two sheets of a size specified, and be published at a less price than

sixpence. This last definition was taken almost verbatim from the 60 Geo. III. & 1 Geo. IV. c. 9, s. 1, which made certain papers and pamphlets "newspapers," in order to check seditious publications of that description. Pamphlets had by the 10 Anne, c. 19, and ever since been liable, when below a certain size, to a duty corresponding to that upon newspapers, but when above that size only to a duty which, although very much larger "per" sheet, was payable only in respect of one copy of the impression. In these respective duties several modifications were made from time to time to prevent newspapers of larger size escaping with pamphlet duty.

The question really at issue was, whether the frequency of publication of a paper, containing any news, was the sole test of its being a newspaper, or whether the main object of its publication being to give news was not an independent one. The learned barons who composed the majority observed, that the ordinary meaning of the word newspaper being a publication of recent events, published regularly at short intervals, the interval requisite to constitute it such was indefinite and uncertain until the 60 Geo. III. & 1 Geo. IV. c. 9, s. 1. That that statute defined the interval, and made subject to duty a class of publications not before liable to it. That none of the statutes contained the terms "*review*," "*magazine*" or "*register*." That the last act being an act to reduce the duties on newspapers, no new duty was imposed by it.

On the other hand, it was said by Parke, B., that the statute does not make a newspaper of everything containing "public news, intelligence or occurrences *alone or exclusively*," in which case, by the addition of an anecdote of ancient history, evasion would be easy; neither does it of everything containing "any news, otherwise," adds his lordship, "a literary work might be so considered which comprised some narrative of a very recent event; the *Law Magazine*, for instance, which contains a summary of the events of the last quarter." That the term used is the indefinite "containing news," which cannot mean either *exclusively* news or *any* news, but must mean a paper, "*whose main or general object is to give to the public information as to recent events*." That the schedule to the 6 & 7 Will. IV. c. 76, was intended to affect three several descriptions of papers enumerated in it, and that from the use of the words "and also," the last clause was cumulative and not restrictive, and that to define what was "news" was by no means intended.

Upon the whole, the effect of this case is by no means satisfactory to the mind, either as to the decision come to in it, or as to the state of the law (some dozen statutes were cited) upon so

apparently simple a question. Platt, B., in his elaborate judgment, seemed to neglect the distinction taken by Parke, B., which is the gist of the whole matter, for in that judgment it is assumed that "papers containing public news, &c. published in that way (less than twenty-six days interval, &c.) were not liable to duty by any then existing law," before the 60 Geo. III. & 1 Geo. IV. c. 9, else there had been no reason for passing it. But in the same judgment mention is made of the classes of descriptions in the schedule of 6 & 7 Will. IV. c. 76, yet it does not appear that anything could fall under the first of them which does not fall under the third, or that if the first were obliterated, any duty would cease to become payable. Indeed, in the absence of the protection of the 60 Geo. III. & 1 Geo. IV. c. 9, s. 4, there would be no means of preventing a total evasion of the duty, if four independent papers were to be published in rotation, each at intervals of four weeks, and each giving exclusively the news of the week immediately preceding its own publication.

COUNTY COURT—COSTS—CONCURRENT JURISDICTION—13 & 14
VICT. c. 61, s. 11—DISCRETION.

Macdougall v. Paterson, 15 Jur. 1108; *Hewitt v. Paterson*, 20 Law Jour.
(Ex.) 337.

THE first case is of sufficient importance to deserve a short notice, because it directly conflicts with the decision of the Court of Exchequer in *Jones v. Harrison* (20 Law J. 166, and see L. C. in the LAW MAGAZINE for August last), as to the construction of this section of the County Courts Extension Act. Upon the substitution of a certificate, to be obtained in all cases of concurrent jurisdiction, by the plaintiff, in order to get his costs for the suggestion, which, in cases where the County Courts had (so far as costs were involved) an exclusive jurisdiction, the defendant was obliged to enter to escape the payment of them, it was held by the Court of Exchequer that even in cases of concurrent jurisdiction, the granting such certificate was a matter of discretion. Now the Court of Common Pleas hold that it is obligatory. The question is of some importance, especially to persons having claims under 20*l.* upon debtors living at some distance from them; arguments may be found each way, but it is to be lamented that the act should not be more explicitly drawn, or rather that the grammatical frame and construction of statutes should not be more settled. From the second case we may infer that where the concurrent (and with a view to costs, exclusive) jurisdiction would have been that of

the London Small Debts Court, a suggestion is still necessary; the 13 & 14 Vict. c. 61, s. 11, only applying to the concurrent jurisdiction of the courts extended by that act, and no special provision having been made for the London Small Debts Court.

**TITLE BY FINDING—LARCENY AFTER FINDING—FELONIOUS
TAKING—POSSESSION—CUSTODY.**

Bridges v. Hawkesworth, 15 Jur. 1079; *Reg. v. Preston*, 21 Law J. (M. C.) 41.

THAT the finder of a chattel acquires a title to it as against any one but the true owner is established by the well known leading case of *Armory v. Delarnie*. (1 Smith's L. C. 150 b.) The first of these cases not only follows that rule, but shows that it is by the *finding* that the title is acquired. A roll of notes dropped by some one in the defendant's shop was there found by the plaintiff, who not intending to divest himself of his rights, but probably imagining that the owner was sure to be found, gave them to the defendant that steps might be taken to discover the owner. No owner appearing, the plaintiff applied for the notes, offering to reimburse the expenses of advertizing. The defendant set up a claim to the notes himself upon the ground of their having been found in his shop, where they had been lying before they were picked up by the plaintiff. The judges of appeal (*Patteson, J.* and *Wightman, J.* affirming the decision of the county court judge) held that this circumstance introduced no variation into the general rule of law, and that the plaintiff was entitled to recover. This would seem to show that title to the chattel accrues to the finder from and at the very moment of finding.

This brings us to the next case, and to a somewhat less simple point. In it a conviction for larceny was quashed, where the prisoner had found a 50*l.* note so marked that the owner might have been found, and two days after changed it, being doubtless at the time aware whose it was. The jury were directed that if the prisoner either knew the owner, or reasonably believed that he could be found, at the time he first resolved to appropriate it, he was guilty. The direction should have been in conformity with the late case of *Reg. v. Thurborn*, (2 Car. & K. 831) noticed in vol. 11 of this Magazine, that the larceny depended upon the question whether the prisoner intended to appropriate the note the moment he took it, knowing what it was, and not then unless he *then* had reason for believing that the owner could be found. Without going into the whole law of larceny after finding, which is treated in the note upon *Reg. v. Thurborn*,

we may notice the moment when the special property of the finder arises; when the taking—in those cases where by reason of knowledge of the owner there is larceny—occurs. Now this is clearly not at the mere picking up or first manual occupation of the chattel: if it were, a felonious taking (of a marked note for instance) would be almost impossible, for an interval, which might be considerable, must elapse before the finder could ascertain that the note was marked, or even that the paper was a note. A naked occupation like this is neither a possession nor a property, and is sometimes distinguished by the term custody. (See *Reg. v. Johnson*, 21 Law J. (M. C.) 32.) On the other hand, the counsel for the crown clearly went too far in this case when he argued that so long as the finder had an honest purpose it was only a bare custody; *Bridges v. Hawkesworth* shows that a finder would have a property in a note which he picked up with the intention of restoring to the owner. The custody ceases, the special property attaches, the taking is, when the finder, recognizing the nature of the chattel, *resolves to take it into his possession, and, as it were, adopts it*. If at that time, knowing or in a position to discover the owner, he nevertheless resolve to appropriate it to his own use, he is guilty of larceny; but he can be so under those circumstances alone, and the jury must from the evidence be able to infer their existence.

Short Notes of New Books.

The Act for the Amendment of the Laws with respect to Wills, 7 Will. 4 & 1 Vict. c. 26. By James Parker Deane, D. C. L., Advocate in Doctors' Commons, and of the Inner Temple, Barrister-at-Law. London : Wildy & Sons, Lincoln's Inn Gateway. Dublin : Hodges & Smith, 1852.

THIS volume has come to hand too recently to enable us to do justice to it. The editor has carefully collected nearly every case since this act was passed, and has grouped them under each section they refer to, so that one section stands often several pages distant from its predecessor. This is not convenient, and the cases themselves need not have been given at such length ; the gist might have been better condensed and methodised ; but, on the whole, the work is a useful one.

"The Common Lodging Houses Act, 1851," and "The Labouring Classes Lodging Houses Act, 1851," adapted and arranged by Robert A. Strange, Esq., of the Inner Temple, Barrister-at-Law. London : Shaw & Sons, Fetter Lane. 1851.

THIS is a very useful act, and this edition is clearly printed and carefully edited, with practical notes on each section interposed between them, with forms and a very copious index.

Some Questions of the Day affecting Lawyers. By William David Lewis, Esq., of Lincoln's Inn and Gray's Inn. Published by Request. London : Stevens & Norton, Bell Yard, Lincoln's Inn. 1851.

THIS lecture is an able one. Mr. Lewis thus treats the question which forms the subject of one of our leading articles, and we are glad of this opportunity of laying before our readers what is here

set forth against the proposed access of client to counsel exclusive of the attorney :—

“ The public are interested, chiefly and pre-eminently so, in maintaining the separate functions of counsel and attorney. I agree to view it as purely and entirely a question of duty to the public. Economy in legal proceedings is the object sought. Be it so. Is not cheapness a relative term? Does it not mean that you obtain a commodity of equal quality and value for less money? Well, on the ground of saving expense, you admit the client to direct intercourse with the juriconsult, and you dispense with the man of business who (as things now are) searches for, collects, and arranges the material circumstances which should influence the juriconsult's advice, and without which his advice will only be a delusion. The opinion, then, is given to the eager client, upon his representation of the facts; but it happens, first, he has not apprehended the relevance of certain collateral circumstances, which he either failed to ascertain and inquire into, or to disclose to his adviser; and next, the materials upon which the adviser proceeds are so scanty and ill-digested, that the only opinion he can give is one incumbered with a variety of conjectures and hypotheses, reservations and precautions, from which it must be entirely hopeless for the uninstructed client, in the majority of instances, to divest the facts of his case. But suppose he attempts to do this, and proceeds again to his counsel with his amended statement. Is not this to carry a new fee to the adviser? And, if so, will not this repetition of conferences and opinions, which the unfortunate client must obtain before he can receive a clear and unqualified judgment, seriously diminish the pecuniary advantage which it is said he will derive from discarding the attorney? Or, do you propose, that the barrister should himself do the business out of doors as well as in his chambers? If so, is he to discharge such functions without additional compensation for his trouble, as well as reimbursement of his expenses out of pocket? Or, supposing that these expenses are arranged, to what have you reduced the Bar? Have you not lowered their capacity as men of science and study in the subtleties of jurisprudence? Is it possible that they can be ready and expert in detecting the latent conflicts of law, while they are daily experiencing the annoyance and excitement of personal investigation into the facts of their clients' cases, and personal conferences with expectants, claimants, and wrong-doers?

“ I answer, that the scheme is wholly impracticable. Every one who has had experience in advising (and I am able myself to speak from an experience not inconsiderable) knows that the careful, clear and circumspect preparation of the narrative upon which counsel advises, is that upon which the whole value of the advice is contingent. Has any one been appealed to, in private life, by a friend interested in a legal question, without being forced to the conclusion that it would be the very worst and most injurious arrangement for the public which could possibly be made, if the Bar were to encourage them to personal consultations.

“ And, surely, it is an overstrained notion to suppose that, as a matter of right and duty, the Bar are bound not to place any restriction upon the access of clients to their chambers. The question of duty is not independent of the general question of public interest and convenience. If, for the public weal, the rule of a division of labour ought in this case, as in others, to be adhered to, it is Quixotic to argue that there is any paramount or natural claim which is of force to supersede it. Suitors have a right to legal assistance in the cheapest form, only in the sense that, in determining what is cheapest, the other interests of the state and the community must be consulted,—and not at all hazards opposed.

"The truth of the question is, that so far as clients are now involved in too great expense in obtaining legal assistance, the fault is to be found in the mode of professional remuneration of attorneys. It is here that change is needed; and a due attention to this point will leave this foolish project of altering the intercourse of the Bar, without even a shadow of sophistry to support it, as it already is undoubtedly altogether fallacious and wrong in substance.

"I need add nothing as to the counter-proposal to make free trade of advocacy. It will suffice as a caricature of the peculiar tendency of the age, or the hour. The existence of a separate faculty of counsellors is a want which only an advanced and refined civilization experiences. If England, because she sets value upon commerce and has made it free, applies political economy to moral institutions, and the tests of arithmetic to social grades and distinctions, she must be content to be told that it is no sign of healthy progress, or high destiny, in her future national career. Nor does it advance the argument to say that America has allied the attorney to the advocate; for, so far from proving the wisdom of the scheme, it confirms the remark that it is worthy only of a people that make material interests and physical prosperity their aim and their goal.

"Seriously, then, would I warn the public not to give easy credit to the sophistries now propounded for sending all justice to the local courts, and denying all privilege to the Bar in those courts. Such schemes are emphatically of a downward tendency; and it will be well if we do not, in this instance, fall into the error (of which Archbishop Whately reminds us in the passage I before extracted) of viewing indistinctly and uninstructedly the significant occurrences of our own time."

The Ragged School Union Magazine for January, 1852. London :
Partridge & Okey, Paternoster Row. Edinburgh : Johnstone.
Dublin : Robertson.

A MOST useful Periodical in aid of the news of a society which powerfully assails the sources of crime.

Report of the Liverpool Domestic Mission Society. London :
E. T. Whitfield, 2, Essex Street, Strand. Liverpool : Baines &
Herbert, Castle Street. 1851.

A GREAT effort has been made at the Birmingham Conference, in December, to induce the Home Secretary to establish penal reformatory schools throughout the country. We believe that these well-designed efforts will not be fruitless. Both the above tracts labour in the same cause ably and zealously.

Patentable Invention and Scientific Evidence. By William
Spence, Esq. London : Stevens & Norton.

MR. SPENCE says his object is to show that the essential law of patents is not rendered uncertain in its principle of application by any apparent difficulties arising from the particular form in which it has become usual to tender the evidence bearing upon the facts in issue

between the parties in the suit or cause. Nevertheless he deems his argument nowise opposed to patent law reform. Readers will judge for themselves how far they think this reconcilable with the view taken. We do not; and greatly prefer an entire alteration of the present law.

Reports of Cases decided in the Court of Session, Teind Court, Court of Exchequer, Court of Justiciary, and in the House of Lords; with Notes of English and other Foreign Cases recently decided. By Robert Stuart, James S. Milne, and William Peddie, Esqs., Advocates; and William Paterson, Esq., Barrister-at-Law, Gray's Inn, London. Edinburgh: Bell & Bradfute. London: Butterworths, Fleet Street. 1852.

THIS is a new set of Reports, appearing in weekly numbers, which is evidently prepared with great care and ability, and will, we doubt not, prove a most valuable acquisition to the Scotch Bar and its legal profession. The publication in weekly numbers is an excellent plan, and a great improvement on the wretched system of the dilatory and uncertain deliveries of what are called the Standard Reports.

A Treatise of Legal Time, with its Computations and Reckonings. By Humphry Woolrych, Esq., of the Inner Temple, Barrister-at-Law. London: late W. Benning & Co., 43, Fleet Street. 1851.

THERE is a good deal more to be said on this subject than we had an idea of; and there is much useful information to be derived from this book. The subject is well methodised and skilfully handled.

The Westminster Review, No. CXI. London: Chapman.

THIS Review has passed into new hands; and if this number is a fair specimen of its future, it will rank among the ablest periodicals of Europe. For the first time we find the iniquitous character of Mary Queen of Scots treated with historical truth, and the conduct of Elizabeth properly vindicated, in an article of great power, and a peculiarity of style, which strongly reminds us of Carlyle. The latest continental theory of legislation is the article most in our province. It gives a fair view of its subject, and is well written and full of research.

The Royal Pardon vindicated in reference to the Claims of Mr. W. H. Barber on the Justice of the Country. By Sir Geo. Stephen, Barrister-at-Law. Crockford, 29, Essex Street, Strand. 1852.

It appears by this new edition, that in the last judgment the only reference made by the court to the new evidence before it was founded on a total misconception of an averment in Mr. Barber's affidavit, which not he, but Sir George Stephen, had introduced, and for the principle laid down, in which not he, but Sir George Stephen, was accountable. Yet upon this passage, which Sir George could at once have explained, it is stated by him, did the judgment of Lord Campbell rest.

Then again, "The application having been once made and refused, it was intimated to Mr. Roebuck that he could only be heard in respect of '*new* matter for consideration supplied by the affidavits.' " Here was an insuperable difficulty, and it was one against which even Mr. Roebuck could not successfully contend.

Mr. Barber's grievances therefore, according to Sir George Stephen, are neither few nor slight, but the one on which he seems especially to insist is the following—

"But it was his improper conviction, and the sentence consequent upon it, that laid him under the necessity of applying to the court for leave to renew his certificate; it was, therefore, the first duty of the court to give full effect to the pardon by reinstating him, as far as possible, in the position from which his improper conviction had displaced him; after this, the court might, correctly, according to its own views, have entertained an application of the Law Society to strike him off the roll for misconduct. It would still have been a question, whether the misconduct charged against him, is such as to justify his being struck off the roll, even if proved: no precedent could be found for such a step, and it is acknowledged to be a doubtful point. There can be no doubt, however, that to set aside the pardon altogether, by this anomalous and equally unprecedented proceeding, is a judicial error. There is not a single case to be found in the books, in which the royal pardon has been thus nullified by the royal courts; and thus new law has been created (not declared), as if to found a plea for punishment in hostility to the prerogative of the crown: Mr. Barber's case is truly unique in all its points!"

Foss's JUDGES.—We are reluctantly compelled to defer a written article on this work till our next number.

Events of the Quarter.

MISCELLANEOUS.

BUSINESS OF THE COURT OF QUEEN'S BENCH.—The new arrangement of trying all cases during the term seems to have given satisfaction. Heretofore, on the days appointed for sitting at Nisi Prius in term, the court sat in Banco from ten till eleven, and at Nisi Prius from eleven till between two and three, when the judge went to chambers. During the present term, on the days for sitting at Nisi Prius, the court did not sit in Banco at all, but sat at Nisi Prius from ten in the morning until a late hour in the evening, so that the causes were properly tried and very many were disposed of. In London a similar course has been adopted, and the list has been completely cleared.

THE VACANT MASTERSHIP IN THE COURT OF EXCHEQUER.—The appointment to the vacant Mastership of the Court of Exchequer cannot be made until after the meeting of parliament, when a certificate must be given of the necessity of the appointment. The salary is 1,200*l.* a year.

The Registration of Deeds Bill will not, we believe, be re-introduced by the government. We do not lament it unless a better one is framed. The last would have simply increased the expense where it ought least to fall, viz., on small conveyances. The security of registration ought also to be retrospective, and the title secured by act of parliament.

FAREWELL DINNER TO MR. PEACOCK, Q. C.—The Bar of the Home Circuit gave a farewell dinner on Saturday evening, at the Albion, Aldersgate-street, to Mr. Peacock, Q. C. on his appointment as legal member of the Supreme Council of the Indian Government. Mr. Serjeant Channell, as leader of the circuit, presided; and among the gentlemen present were Mr. Baron Platt, Sir Frederick Thesiger, Mr. Serjeant Shee, Mr. Montagu Chambers, Q. C., Mr. E. James, Q. C., Mr. Bramwell, Q. C., Mr. Bodkin, Hon. R. Denman, Mr. Serjeant Gazelee, Mr. Petersdorff, Mr. Locke, Mr. W. W. Attree, Sir Walter Riddell, Mr. E. R. Simons, Mr. M. Fortescue, Mr. Lush, Mr. Bovill, Mr. Parry, Mr. W. Payne, Mr. Woollet, Mr. Rochfort Clarke, and about forty others, members of the circuit.

We learn that Dr. Bowyer has most liberally offered to the benchers of Lincoln's Inn to deliver a gratuitous course of lectures

there on Public Law. Dr. Bowyer's eminent reputation and high qualifications for this arduous task will doubtless ensure the acceptance of his offer by the committee for legal education, to whom, we believe, it has been referred. It is of the utmost importance that whilst each subdivision and separate branch of jurisprudence are made the subject of distinct study and exposition, the more comprehensive and general aspect of the law, and the relation and affinity one branch of it bears to another, be likewise presented to the student, and appreciated by the public. No better method can be well devised for this purpose than the course of lectures proposed.

APPOINTMENTS, CALLS, &c.

Joseph Pollock, Esq., late Judge of the Salford Hundred Court, to be Judge at the County Court at Liverpool, vice Mr. Ramshay, removed.

J. K. Blair, Esq., of the Northern Circuit, to be Judge of the Salford Hundred Court, vice Mr. Pollock, promoted.

Thomas Falconer, Esq., to be Judge of the Brecknockshire and Glamorganshire County Courts, vice Mr. Wilson, deceased. Mr. Falconer owes this appointment to his brother-in-law, Mr. Roebuck. We were not aware that Mr. Falconer had ever practised at the Common Law Bar.

B. Peacock, Esq., Q.C., as Legal Member of the Supreme Council of India, vice Mr. Bethune, deceased.

J. Greenwood, Esq., Q.C., as Solicitor to the Treasury.

T. Phinn, Esq., as Recorder of Devonport, vice Mr. Greenwood, promoted.

Mr. James Bacon, the son of Mr. Bacon, Q.C., as Secretary of Causes to the Master of the Rolls, in the room of Mr. Murray, appointed Clerk of Records and Writs.

C. Temple, Esq., as Chancellor of Durham, an honorary sinecure.

Arthur J. Johnes, Esq., one of the Judges of the Welsh County Courts, as Recorder of Carmarthen.

W. Roden Rennalls, Esq., has been elected Benchet of the Middle Temple. He was many years Solicitor-General in the Island of Jamaica, and he now occupies a prominent position at the Chancery Bar and the Privy Council.

RESIGNATION OF MR. COMMISSIONER CURRAN.—Mr. W. H. Curran, Q.C., for many years one of the commissioners of the Insolvent Debtors Court in Ireland, retires according to the arrangement for superannuation made in the new Act for the regulation of that court. Mr. Baldwin, Q.C., is now the sole commissioner.

All the circuit business, heretofore discharged by the Insolvent Debtors Commissioners, has been transferred to the assistant barristers at Quarter Sessions, and the duties of the commissioners are confined to the Central Court in Dublin.

NEW POOR-LAW COMMISSIONERS FOR IRELAND.—The Medical Charities Act, passed last session, provided for the appointment of two new commissioners, one to be a medical doctor, to have the charge of the department of the poor law connected with the superintendence of the medical charitable institutions. The Treasury fixed the salary at 1,200*l.* per annum, and the medical commissionership is conferred upon Dr. J. M'Donnell, one of the medical officers of the Richmond Hospital, and Mr. John Ball, Assistant Poor Law Commissioner, is the second new commissioner. The Irish Poor Law Board now consists of five members, namely, Mr. Alfred Power, chief commissioner, whose salary is 2,000*l.* per annum; Messrs. M'Donnell and Ball, whose salary is each 1,200*l.*; and the chief and under secretaries, Sir William Somerville and Sir T. N. Redington, as *ex officio* members of the board.

The vacant chair of law in the Queen's College, Cork, has been filled by the appointment to it of Mr. Michael Barry, a Roman Catholic gentleman of that city.

CALLS TO THE BAR.—**MIDDLE TEMPLE, NOV. 8.**—Charles Pridham, Esq.; Woodthorpe Brandon, Esq.; James Berrage Smith, Esq.; James Motteram, Esq.; and William Henfrey, Esq.

MIDDLE TEMPLE, NOV. 22.—William Sables Finlason, Charles Harding Hitchings, Michael Denny, Josiah Rees, Alfred Wills, Thomas Henry Whitaker, and James Francis Hollings.

INNER TEMPLE, NOV. 21.—Augustus Phillips, Esq.; William Sharp Cross, B.A.; Richard Bright, B.A.; John Hampden Fordham, B.A.; William Joyce, Esq.; Henry Thomas Wroth, B.A.; Thomas Potter, B.A.; David Featherby Thornbury, B.A.; Robert Lukin, Esq.; Spencer Vincent, B.A.; Alexander Staveley Hill, S.C.L.; George Ward Hunt, Esq.; George Taylor, Esq.; Hugh Thurstain Hulton, Esq.; Thomas Cragg Rawsthorne, B.A.; John Maurice Davies, L.C.L.; Henry Jeffreys Bushby, Esq.; Pedro D'Aleantara Travessez Valdez, Gent.; and William Hawthorth Holl, Esq.

LINCOLN'S-INN, NOV. 21.—William Hackett, Esq.; Edward Frederick Smith Pigott, Esq.; William Wilkie Collins, Esq.; Charles Pole Stuart, Esq.; Mark Dewsnap, Esq.; William Park Dickens, Esq.; Stephen Soames, Esq.; Charles Thomas Calvert, Esq.; Horace Townsend, Esq.; Philip Williams, Esq.; and Edward Samuel Dale, Esq.

GRAY'S-INN, NOV. 5.—William Vosper, Esq. and Joseph Taylor, Esq.

NECROLOGY.

MACKENZIE, Lord.—We have to add the name of another eminent lawyer and judge to the melancholy list, which within the last two years has included those of Jeffrey, Moncrieff, Maitland, and the ex-Lord President Hope. Lord Mackenzie died at his seat, Belmont, near Corstorphine. His lordship had attained the age of 74, having been born in 1777.

JONES, William, Esq.—On the 25th October last, at Westbourne Park Road, late of the Master's Office.

MAULE, George, Esq.—On the 14th November last, at Wilton Crescent, Belgrave Square, solicitor to her Majesty's Treasury.

DIX, Richard, Esq.—On the 17th November, at 10, Symond's Inn, Chancery Lane, solicitor, aged 61.

MONTAGU, Basil, Esq., Q. C.—On the 27th November, formerly a commissioner in bankruptcy, who died at Boulogne, in the 82nd year of his age. The distinction acquired by Mr. Montagu in his profession was not the only feature of his life which made him a public character. He was the son of John, the fourth Earl of Sandwich, by the celebrated beauty of her day, Miss Margaret Reay. The death of Miss Reay by the hand of another distracted lover, the Reverend James Hackman, and the execution of Mr. Hackman, form a tragic occurrence well known to our readers.

VEAL, John, Esq.—On the 28th November, at Hampstead, clerk of records and writs of the High Court of Chancery, aged 45.

SHARP, Samuel, Esq.—On the 8th December, at 37, Ely Place, solicitor, aged 62.

WILSON, John, Esq.—On the 8th December, at Cwmffrwd, near Carmarthen, judge of the County Courts of Brecknockshire and Glamorganshire, and recorder of Carmarthen, in his 66th year.

PRIDEAUX, Neast Greville, Esq.—On the 24th December, at Weston-super-Mare, aged 68, solicitor, of Bristol.

PENEY, Bevan George, Esq.—On the 27th December, at Glauyrafou, Crickhowell, aged 28, barrister at law, of 15, Lincoln's Inn Fields and Glauyrafou.

DOUGLAS, Joseph, Esq.—On December 28, barrister, of Garden Court, Temple. The deceased was a member of the Western Circuit, and had for many years been the revising barrister at Dorset. On Wednesday evening he was seen to enter his chambers, and the next morning he was found by his clerk lying on the floor in a pool of blood. He was then warm, and with a long incised wound in the left temple, four inches long, and denuding the skull to the bone. There had been a great hemorrhage, and he was quite dead. A coroner's jury returned the following special verdict:—"That the deceased,

Joseph Douglas, died from loss of blood from a wound on the upper part of the left temporal artery, produced by having accidentally fallen against a key then in the lower part of a bookcase. Mr. Douglas was called in 1818."

ADAMS, Henry, Esq.—On the 3rd January, at Kingston, Portsea, solicitor, aged 46.

HEATH, Serjt., George.—On the 21st January, in the 74th year of his age, at his residence in Russell Square. The deceased having become an admitted member of the Inner Temple, commenced practice in the Court of Common Pleas, from whence he was appointed as the deputy-judge under Mr. Serjeant Dubois, deceased, at the County Court of Middlesex, Kinggate Street. On the abolition of that Court Mr. Serjeant Heath's son was installed as a judge of Bloomsbury County Court in conjunction with Mr. Dubois. The deceased serjeant died, surrounded by his friends, after an illness of not long duration, in the 74th year of his age.

Correspondence.

OUR REVIEW OF WEBSTER'S CASE.

To the Editor of the LAW MAGAZINE.

SIR,

In your notice of the report of the Webster case, in the May number of the LAW MAGAZINE, you intimate a possible recurrence to the subject in a future number. As the first article only indicated a publication of the book on the American side of the water ("Little and Brown, Boston"), and as there is a possibility—though probably a bare possibility—that some of your readers may take interest enough in the case to wish to procure the most authentic report, I take the liberty of asking the favour, that in case of such second notice you will add to the names of the American publishers that of *John Chapman, 142, Strand, London (price 14s)*

I take the liberty of including a statement of the price, thinking that its comparative cheapness may perhaps induce a little circulation for the book, and thus answer in part the design of the publication, which was not for profit, but to vindicate, through a fair and reliable record of the proceedings, the character of our state judiciary—a character, which, you will allow me to add, was most severely drawn in question on the other side of the water, not (with all deference for your very friendly and too partial notice of our administration of justice) for the *excess of proof and superabundance of apparatus*, but for the insufficiency of the evidence to justify a conviction, and the harsh and unwarranted charge of the chief justice. I refer rather of course to criticism before the confession, than after: for after the prisoner's *manufactured* admission of guilt, (as I am inclined to esteem it,) scarcely a voice in the whole country was raised in deprecation of the result, however obtained.

As a proof of the *unexpectedness* of the conviction—by those even nearest to the scene of trial, and best acquainted with the actual aspect of the case—you will allow me to add a statement of an incident repeated to me by Mr. Clifford, that on the morning before the verdict, and when he was meditating in his morning walk his closing argument, he was saluted by one of the leading Boston lawyers with, "I don't suppose that you expect to get a conviction in your case; and on the whole I think that it is about right that you should not." And in the evening, after the jury had retired, and just as they were coming into court, one of the sheriffs,

who had had some oversight of them, brought a story into the court-room that they had agreed to acquit. So too, after conviction, though of course before confession, the Governor was beset with applications from all parts of the Union, and from the highest legal authorities, for a suspension of proceedings on account of the injustice of the conviction.

But without detaining you with these statements, quite out of season, as you will probably regard them, I subscribe myself,

Yours, &c., very respectfully,

GEORGE BEMIS.

*London, August 25th, 1851,
4, Cavendish-Square.*

P.S.—I hope my worthy namesake, *John Beames, Esq.*,¹ will not take offence at being made reporter of this American case by your printer: certainly, I shall not. But I cannot so readily trace his original of our Mr. Justice *Dewey*, who, in his better judgment, stands for Mr. Justice *Davey*. I suppose it is all the same—in *England*—however.

As an off-set to private matters, I inclose, for the benefit of your journal, a copy of the recent Act of Massachusetts' Legislature for the amendment of pleadings and practice; also, a copy of the commissioner's report, which you may have seen, as Mr. Davis, the Secretary of Legation, tells me that he has circulated several copies. You will find among the acts several other specimens of what we of the bar are inclined to regard as experimental legislation for Massachusetts, besides the practice act; I allude, more particularly, to the free banking, general corporations and homestead exemption bills, which we have borrowed mainly from New York. The secret ballot act and the call for an amendment of the constitution were purely party measures of the so-called coalition party, which elected Mr. Sumner to the Senate. Of course, the printer of the *LAW MAGAZINE*² will not have an opportunity to misprint any of the present communication.

As before,

G. BEMIS.

¹ See notice also in the February number.

² [*He* has misprinted nothing. It is Bemis, in the American edition; and we have received no other. This letter was accidentally omitted in our last number.—EDITOR *LAW MAG.*]

Legal and Parliamentary Papers.

RAILWAYS.

At the end of the year 1845, the length of railway opened in the United Kingdom was 2,023 miles. The total expenditure on railways at that date was 71,647,000*l.*—about 35,070*l.* per mile; and the gross traffic receipts from the railways for that year were 6,669,230*l.*—about 3,469*l.* per mile per annum.

At the end of the year 1851, the length of railway opened in the United Kingdom had increased to 6,928 miles. The total expenditure on railways had swelled to 236,841,420*l.*—about 35,058*l.* per mile; and the gross receipts of the year were 14,967,310*l.*—not more than 2,281*l.* per mile per annum.

In 1842, the average cost per mile of the railways in existence had been 34,690*l.*; in 1845 it had been 35,070*l.*; in 1848 it had been 34,234*l.*; and in 1851 it was again 35,058*l.* So that the practical cost per mile had increased, instead of diminished with the cost of material and the increase of skill.

The gross traffic receipts per mile since 1842 have been—In 1842, 3,113*l.*, or 8.29*l.* per cent. on the capital then expended; in 1843, 3,083*l.*, or 8.82 per cent. on the capital; in 1844, 3,278*l.*, or 8.84*l.* per cent.; in 1845, 3,469*l.*, or 9.30*l.* per cent.; in 1846, 3,305*l.*, or 9.25*l.* per cent.; in 1847, 2,870*l.*, or 8.20 per cent.; in 1848, 2,556*l.*, or 6.78*l.* per cent.; in 1849, 2,302*l.*, or 6.13*l.* per cent.; in 1850, 2,227*l.*, or 5.80*l.* per cent.; in 1851, 2,281*l.*, or 6.35*l.* per cent. Therefore the increased receipts fell behind their due proportion to the increased length opened every year since 1842 down to 1850; and only last year, when the increased length opened fell below the increased length opened in the preceding year by more than half (from above 590 additional miles to about 240 additional miles), showed signs of a healthy reaction.

If from the 6.35*l.* per cent. of gross traffic receipts yielded last year you deduct 45.0*l.* per cent. for working expenses, we have for the past year an average dividend of 3*l.* 10*s.* per cent. on the whole of the capital expended on railways in the United Kingdom. One easily understands this state of things, on recollecting that such lines as the Liverpool and Manchester, which paid its 10 per cent. yearly for fifteen years, the Grand Junction, which formerly paid from 10 to 12 per cent., and the London and Birmingham about 9 per cent., are now reduced to 5½ per cent.; the Lancashire and Yorkshire from 8 per cent. to 2 per cent.; the South-Western from 8 per cent. to 3½ per cent.; the Great Western from 8 per cent. to 4 per cent.; and other lines in proportion.

STATISTICS OF COUNTY COURTS.

THE progress of the County Courts in public esteem, and their immense utility, has just been evidenced very satisfactorily in a return of the cases tried in them, and other facts relating thereto, from which we have collated the following table :—

	1849.	1850.
Total causes entered	395,191	396,793
" " for above 20 <i>l</i>	4,297
" " actually tried	226,403	217,173
" " tried by a jury	802	769
" " in which verdict obtained } by party requiring it.. }	386	405
Executions issued	128,012	45,225
Commitments	32,750	13,086
" " enforced	14,769	5,693
Money sought to be recovered	£1,888,504	£1,265,115
" actually recovered	£628,402	£647,586
Costs	£170,957	£172,064

It also appears that 236,368 of the plaints were for sums above 2*l*, most of which, previously to the passing of the act, must have been brought in the superior courts. The amount of plaints is large, and the smallness of the trials by jury, together, are most favourable to the credit of the institution, and the confidence of the people in the judges and their decisions. The costs are high—too high; and yet both judges and clerks are underpaid—from *other* fees, which amounted to £205,687 in 1850. Why is a fund accumulated at all? The fees might be still decreased for the smaller sums.

List of New Publications.

Alcock.—Supplement to a Treatise on Personal Property in the East Indies. By J. B. Alcock, Esq., Barrister. 8vo. 2s. sewed.

Becke.—Chancery Evidence: Considerations as to the Mode of taking Evidence in Chancery. By G. Becke, Solicitor. 8vo. 1s. sewed.

Chitty.—A Collection of Statutes, with Notes thereon, intended as a Circuit Companion. Second Edition; containing all the Statutes of Practical Utility in the Civil and Criminal Administration of Justice to the present time. By W. N. Welsby, Esq., and E. Beavan, Esq., Barristers. Volume the Second (to be completed in 3 vols.) Royal 8vo. 2l. 2s. cloth.

Collier.—A Letter to Lord John Russell on the Reform of the Superior Courts of Common Law. By R. P. Collier, Esq., Barrister. Second Edition. 8vo. 1s. sewed.

Cox and Babington.—New Criminal Law Statutes, 1847 to 1851, with a Digest of all Reports. By E. W. Cox, Esq., and W. St. L. Babington, Esq., Barristers. Post 8vo. 7s. 6d. cloth.

Deane.—The Act for the Amendment of the Laws with respect to Wills, 7 Will. 4 & 1 Vict. cap. 26, with Notes, and References to Decisions upon the several Statutes. By J. P. Deane, D.C.L., Advocate. 8vo. 9s. cloth.

Harvey.—A Letter to Lord John Russell on the Benchers and the Bar. By D. W. Harvey. 8vo. 1s. sewed.

Hertslet.—A complete Collection of the Treaties and Conventions and Reciprocal Regulations at present subsisting between Great Britain and Foreign Powers, and of the Laws, Decrees, Orders in Council concerning the same, so far as they relate to Commerce and Navigation, Slave Trade, Post Office Communications, Copyright, &c., and to the Privileges and Interests of the Subjects of the High Contracting Parties, compiled from authentic documents. By Lewis Hertslet, Esq., of the Foreign Office. The Eighth Volume, (containing a General Index to all the previous Volumes.) 8vo. 30s. boards.

Headlam.—The Trustee Act of 1850. By T. E. Headlam, Esq., Barrister. Second Edition, with considerable additions. 12mo. 3s. 6d. sewed.

Irving.—Digest of the Inhabited House Duty Act, 14 & 15 Vict. cap. 36, with the Rules and Regulations of former Statutes which are referred to and revived by this Act, and the Decisions thereon. By G. V. Irving, Esq. 8vo. 3s. 6d. cloth.

Lawyer.—The Cabinet Lawyer. Fifteenth Edition, corrected to 14 & 15 Vict. Fcp. 12mo. 10s. 6d. cloth.

Lees.—The Laws of Shipping and Insurance, with a copious Appendix containing the existing Statutes, Pilots' Regulations, &c. By J. Lees. 5th edition. 12mo. 7s. 6d. cloth.

Lewis.—Some Questions of the Day affecting Lawyers, considered in a Lecture delivered in the Hall of Gray's Inn, Nov. 1851. By W. D. Lewis, Esq., Barrister. 8vo. 1s. 6d. sewed.

Macrae.—The Practice of Insolvency under the Protection Acts, 5 & 6 Victoria, 7 & 8 Victoria and 10 & 11 Victoria, with the Statutes, Rules, Orders, List of Fees, the Forms and Cases decided. By D. C. Macrae, Esq. Barrister. 12mo. Part 1 (to consist of 2 parts). 12s. 6d. boards.

Morley.—A Digest of Reports of Cases in the Courts of India. By W. H. Morley, Esq., Barrister. 2 vols. royal, 8vo. 8l. 8s. cloth.

Reddie.—Inquiries in International Law. Second Edition, with additions. By J. Reddie, Esq., Advocate. 8vo. 12s. cloth. (Edinburgh.)

Ross.—Leading Cases in the Law of Scotland. By G. Ross, Esq., Advocate. Vol. 3, completing the Work. Royal 8vo. 1l. 11s. 6d. cloth. (Edinburgh.)

Scotch Appeals, The Appellate Jurisdiction in. 8vo. 1s. sewed. (Edinburgh.)

Smirke.—A Letter to Lord Campbell on the Rating of Railways. By E. Smirke, Esq., Barrister. 8vo. 1s. sewed.

Snowden's Magistrates' Assistant, and Police Officers and Constables' Guide, being a Summary of the duties of Magistrates and Peace Officers in the various branches of the Criminal Law usually coming under their cognizance, &c. Second Edition. By D. D. Kean, Esq., Barrister. 12mo. 8s. 6d. boards.

Stafford.—Report of Trials at Stafford Assizes, 1851. 8vo. 10s. 6d. sewed.

Stone.—The Justices' Pocket Manual, or a Guide to the ordinary Duties of a Justice of the Peace. By S. Stone, Solicitor. 5th Edition. 12mo. 9s. boards.

Story.—Life and Letters of Mr. Justice Story. By his Son. 2 Vols. Royal 8vo. 1l. 10s. cloth.

Sugden.—An Essay on the New Statutes relating to Real Property. By Sir Edward B. Sugden. 8vo. 16s. cloth.

Tournay.—A Practical Guide to the Law of Bills of Exchange and Promissory Notes. By S. Tournay. 8vo. 4s. boards.

Walters.—The Registration of Assurances Bill: A Letter to the President, Vice-President and Council of The Incorporated Law Society. By J. E. Walter, Solicitor. 8vo. 1s. sewed.

Woolrych.—A Treatise of Legal Time, with its Computations and Reckonings. By H. W. Woolrych, Esq., Barrister.



THE
LAW MAGAZINE;
OR,
QUARTERLY REVIEW
OF
Jurisprudence.

ART. I.—COUNTY COURTS EXTENSION.

TWO bills have been introduced by Lord Brougham for the further extension of the County Courts. The first, which has already passed through the House of Lords, is intituled "An Act to extend the Jurisdiction of the Judges of the County Courts, and to facilitate Proceedings in the High Court of Chancery." Its main objects are to enable the Court of Chancery to send accounts and inquiries to the judges of the County Courts and to Commissioners in Bankruptcy, who are to examine witnesses *vivâ voce*, and who are to answer as in written interrogatories. They are also to act as Masters in Chancery in orders of reference. General powers are given to the Lord Chancellor to frame regulations, which are to take effect as Orders in Chancery as to causes and matter so referred; he is also to appoint five of the County Court judges to make a table of costs. Witnesses subpœnaed are bound to attend without limitation of distance wherever they may be living—a somewhat stringent power. After giving power to a variety of public functionaries to swear parties making answers, affidavits, &c., &c., the bill goes on to make a variety of miscellaneous enactments which have no reference whatever to the subject of Chancery proceedings. Before entering on the consideration of these, let us express our concurrence in the general tenor of the provisions we have just recapitulated. It is exceedingly desirable that the over-burdened Courts of Chancery should have this power of referring examinations to courts quite as capable of taking them, and who will by *vivâ voce* examinations take them better. The judges of the County Court will certainly have no great head work in the matter, but a great

accession of drudgery. They will have no deductions to make or judgments to give, but simply to read the pleas, and keep the examinations tolerably relevant to the issue.

Of course we give only qualified approval to this arrangement; it is an improvement on the present system, but assuredly a very inferior plan to that which we proposed in our last number, and which has obtained much assent from competent judgments. We beg to remind our readers that it consisted in the formation of Equity County Courts, one in each county or division of counties, to sit once a month or somewhat oftener in each of the busiest districts; that fifteen of the County Court judges best versed in equity should be selected to sit in such courts, and there hear and determine all chancery and equity suits, and those only. There might be a limitation of jurisdiction to 50*l.* annual net value of the property so adjudicated on; or for larger amounts if the parties agreed.

We feel satisfied that this would far better meet the requirements of the case, than any measure for dividing the hearing of the same suit between town and country. If a judge is to have an equitable jurisdiction, it seems desirable that it should be exercised quite as largely as in common law actions, where the judge often makes the demeanour and appearance of the witnesses a material guide to his judgment. In this new bill the system will deprive the judge who finally adjudicates from having this advantage. Certainly he has it not now, but under the proposed plan of *vivâ voce* examinations he *might* have it. The great recommendation of our scheme is, that it would make equity suits much more economical and that they would be more easily and promptly decided than under the proposed system. The well-working of the scheme would depend on the competency of the judges, and it would be only by the selection of really competent men that the system would be effectual. Higher salaries would secure this. Lord Brougham might still introduce a bill for the establishment of the Equity County Courts, and as his vigorous mind needs no long preparation for adopting what may appear to be expedient, if this does, he may doubtless effect it this session.

The 12th section gives the power of hearing appeals from the County Courts in any of the courts at Westminster in banco; and after term, before any two judges. The present act excludes the chiefs!

The next section enables the judges of the superior courts to give the plaintiff his costs, where he sues in superior courts having concurrent jurisdiction with the County Courts.

This is an important and useful section :

XVIII. " If any action or suit shall be brought against any person for anything done in pursuance of this act, or of any other act relating to County Courts, such person may plead the general issue, and give the special matter in evidence ; and the warrant under the seal of the County Court, being produced in any such action or suit, shall be deemed sufficient proof of the authority of the said County Court previous to the issuing of such warrant ; and in case the plaintiff in such action shall have a verdict pass against him, be non-suit, or discontinue the action or suit, the defendant shall in any of the said cases be allowed full costs as between attorney and client."

The next section provides that a schedule of fees shall be framed on account of equity business in County Courts, and the Lord Chancellor may at any time lessen or increase such fees.

The following is an important section, and we give it entire :

XX. " If the council of any city or borough, or a majority of the ratepayers of any parish, within the limits of which a court of local jurisdiction other than a County Court is established under the said act of the ninth and tenth Victoria, chapter ninety-five, or into the limits of which the jurisdiction of such court of local jurisdiction shall extend, shall petition the queen in council that the jurisdiction of such court of local jurisdiction may be excluded in any causes whereof the County Court hath cognizance, and if notice of such petition shall be given two months before it is presented, by public advertisement in such city, borough or parish, and in some newspaper therein circulated, her majesty, by order in council, may declare such exclusion of the jurisdiction of such court of local jurisdiction throughout the whole or any part of the district assigned or which may hereafter be assigned to such County Court, if no petition against declaring such exclusion be presented, and no caveat be entered at the council office ; and if any counter-petition be presented, or any caveat be entered, then her majesty may refer such petition and counter-petition to the Judicial Committee of the Privy Council, upon whose report her majesty may make such order in council as she shall be advised touching the matter of the said petitions in respect of excluding the jurisdiction of such court of local jurisdiction, *and may award compensation to any officers thereof appointed before the passing of this act to be given by the Commissioners of her Majesty's Treasury, who are hereby empowered to pay the same out of the consolidated fund of the united kingdom of Great Britain and Ireland.*"

This is a very salutary provision.

Some useful regulations follow as to the audit of accounts, by which it is provided that the treasurer of the County Court in which any insolvent's estate shall be administered shall also audit the accounts of the clerk in all matters relating to such estate,

and shall make a report to the judge, stating whether a dividend should be made, and the general result; and the judge shall examine the clerk on oath as to the correctness of such accounts, and may make such order as he may deem requisite respecting a dividend, &c.; and the treasurer shall examine the receipts of the several creditors for any dividend.

The clerk and bailiff are to deliver quarterly accounts of the fees received by them to the treasurer.

Then comes section 21, which relates to the much mooted point of the retainer of attorney and counsel, and who may appear in the County Courts.

This section has undergone many mutations, and now stands as follows (April 22nd).

“21. And whereas by the said act passed in the ninth and tenth years of her present majesty it was enacted, that no person should be entitled to appear for any other party to any proceeding in any of the said courts ‘unless he be an attorney of one of her majesty’s superior courts of record, or a barrister-at-law, instructed by such attorney on behalf of the party, or, by leave of the judge, any other person allowed by the judge to appear instead of such party, but that no barrister, attorney, or other person, except by leave of the judge, should be entitled to be heard to argue any question as counsel for any other person in any proceeding in any court holden under that act.’ Be it enacted, that the said last-cited enactment be repealed: and that it shall be lawful for the party to the suit or other proceeding, or for an attorney of one of her majesty’s superior courts of record retained by or on behalf of the party, or for a barrister retained by or on behalf of the party, on either side, or, by leave of the judge, for any other person allowed by the judge to appear instead of the party, to address the court, without any right of exclusive or pre-audience, but subject to such regulations as the judge may from time to time prescribe for the orderly transaction of the business of the court.”

In the first place this section gives a right to counsel to appear though *not* instructed by an attorney, but only by or on behalf of the party. This clause when before proposed gave rise to a great deal of animadversion; and we must say, with great justice, we can conceive nothing more likely to degrade the Bar: and assuredly it needs no further fall. Conceive a barrister at the mercy and beck and call of every old woman who prefers expending a guinea on his services to 15s. on an attorney, and proceeds to “instruct” him accordingly in open court. There is no escape from such incidents if this clause passes. And even if the party who instructs the counsel be of a somewhat higher grade, what pretty instructions he will receive! And how about the evidence and the witnesses? Is he to get it up and examine them himself, and all for the guinea?

And if this be not done, how is it to be done without, and how is the cause of the "party" to be sustained? If the barrister is to examine witnesses and get up the case, he is to all intents and purposes an attorney, and must be so regarded; if he does not do so, justice cannot be done to his client.

The clause in the old section meets all the requirements of the case, and it ought to be maintained. The only alteration required relates to fees. The attorney ought to be allowed such fees as will fairly remunerate him for getting up the case and instructing counsel wherever the sum at issue amounts to 20*l*. This is certainly not so now. It would greatly tend to the due discharge of business and the proper conduct of suits if this were done. It will be no hardship to the poor suitor, who has in all cases the same power of appearing himself, and whose debts or claims never amount to 20*l*. Such a provision would keep alive a Bar, whose very existence is threatened at present. The great bulk of the attorneys would be aided by such a system, as they do not practise or wish to practise as advocates in the County Courts. The abuse of allowing one attorney to appear for another, which is frequently done, should be rigidly prevented. Lord Campbell, on the 13th June last, in the case of *Reg. v. Amos*, said, "I agree with my brother Patteson in the opinion which he has just expressed during the argument, that for an attorney to practise as an advocate, and to take briefs from other attorneys, is *contrary to law, and ought not to prevail*." It is true that this was not the point at issue in the case of *Reg. v. Amos*; but so emphatic and decided an opinion expressed by such judges ought of course to have weight, and it is somewhat surprising that the practise should anywhere prevail. It is no less obvious that it never could have been intended by the legislature to make attorneys advocates for each other. We fear that where this improper practice has obtained, that there is nothing in the new section to make it otherwise: "retained on behalf of the party" will be taken to include an attorney *retained by an attorney on behalf of the party*. The following words should be added:—"Provided always, that no attorney shall be allowed to appear for or instead of any other attorney so retained as aforesaid." The judges ought to suppress this abuse themselves, but inasmuch as they have not universally done so, a positive prohibition seems to be desirable.

The section goes on to enact that there shall be no "right of exclusive or *pre*-audience." Why? Why are the judges' hands to be tied thus? There most undoubtedly ought to be *pre*-audience, in the first place for all undefended causes. A large majority of all the causes fall under this category, and why are

the plaintiffs and defendants to be kept waiting all day whilst three or four long causes are being heard? At Westminster Hall this is never done. Can any one devise a shadow of a reason for making this injustice imperative on the judge, to the annoyance of the great bulk of suitors? This is one of the evils of petty and officious legislation. It is also important that causes in which counsel are retained should, after undefended causes, have precedence. It will be a good means of furthering their employment in such courts, and giving them a chance of obtaining a footing there. Of course, if it be true, as an eminent lawyer in parliament said the other day, that were a motion made to abolish barristers it would certainly be carried, it were useless to expect any such clause on this ground. The former ground (the convenience of suitors) might perhaps be more favourably regarded. At any rate it seems expedient not to prevent the judges from doing in this matter as they please. We trust therefore that this ill-advised section will be altered.

The 24th section allows the Lord Chancellor to give 1500*l.* a year to the judges. It is believed that many will receive less, according to the work done. This is fair enough. The following is a most useful provision, and it ought to be passed *ne mine contradicente*.

“ 25. That it shall be lawful for the Lord Chancellor, by any order or orders to be made by him, from time to time, on a petition presented to him for that purpose, to order that there shall be paid quarterly out of the consolidated fund of Great Britain and Ireland to such of the judges of the County Courts as shall be afflicted with some permanent infirmity disabling him from the due execution of his office, and who shall be desirous of resigning the same, an annuity or clear yearly sum of money for the term of his life, not exceeding two thirds of the yearly salary which such judge shall be entitled to as a judge of County Court at the time of presenting his petition.”

The great recommendation to this is, that besides its manifest justice, a number of old gentlemen who are rapidly becoming inefficient through age and infirmity may resign their work to abler hands, instead of clinging to office for its emoluments.

On the whole, we think, with the exceptions we have named, that this Bill will be an improvement.

ART. II.—THE SCOTCH COUNTY COURTS—REFORM IN THEIR PROCEDURE.

IN our last number a general view was given of the nature and extent of the jurisdiction of the County Courts in Scotland, and of the duties and emoluments of the judges, and we now return to the subject, believing it to be one of both interest and importance. At a time when the question of law reform is so widely discussed, anything that can throw light upon the matter at issue, or aid in the adoption of practical views and measures for the advancement of the cause, whether in this or the sister country, seems not unworthy of consideration; and in the observations we are now about to make, we trust the legal profession beyond the border will give us credit for being influenced by no invidious motives. We believe, and therefore we speak; and we do so with the more confidence of an impartial judgment, that we lately took occasion to advocate an alteration in the constitution of the Court of Appeal from Scotland; an alteration which is urgently demanded both by the profession and the public, and which appears to us to be not only reasonable, but requisite to meet the judicial necessities of that country at the present day.

The true object of the establishment of local courts of law is to secure, as far as possible, the speedy and economical administration of justice; an administration as speedy as is compatible with the due consideration, on the part of the judge, of the causes that come before him; and as economical as can be practically obtained in working out a regular and formal system of procedure; and the question is, are these ends attained by the present forms of procedure in the County Courts in Scotland?

The Sheriff Courts, as was formerly explained, have what is called a small debt and an ordinary jurisdiction; the former applying to all debts and demands not exceeding the value of 8*l.* 6*s.* 8*d.*; and the latter extending to almost every description of civil suit to an unlimited extent. In the Small Debt Court, the pleading and procedure, with the exception of the "complaint" by which action is brought into court, are entirely oral, and the cause is disposed of summarily; the decision of the judge being, practically speaking, completely final and irreversible. It must be understood, however, that the sheriff is not called upon to give judgment in every case off-hand, and without deliberation, immediately after the conclusion of the pleading and the evidence, though that is the usual course in the vast majority of cases. Wherever a question of difficulty or import-

ance in fact or in law arises, he may continue the cause till another court day for decision, so as to have time to come to a mature opinion upon it; or, if he see fit, he may remit it to, or order it to be put upon the roll of ordinary causes, in which case the parties require to plead anew in writing, and a record is made up in the usual forms of the ordinary court. This latter course, however, is very seldom adopted, except when the question at issue, though small in pecuniary amount, involves some point of general importance in the law or to the public; and when it is, therefore, thought, that, in addition to having it fully discussed and deliberately considered, the parties, if they should desire it, should have an opportunity of appealing from the judgment of the inferior to the supreme court.

With these safeguards against the danger of hasty and ill-considered adjudication, the Sheriff Small Debt Courts have worked remarkably well in practice, and have given very general satisfaction to the public as affording means for the cheap and speedy settlement of disputes.

Now let this simple and summary procedure be contrasted with that of the Ordinary Court, in which, it will be remembered, every cause must be tried, however trifling its nature, where the value in dispute exceeds the sum of 8*l.* 6*s.* 8*d.*

The form of pleading in the ordinary court is at present regulated by the Act of Sederunt of the Court of Session of 18th July, 1851, the last on the subject, and is by it assimilated to that of the supreme court. Action is brought into court by a summons, which begins by setting forth the name and designation of the plaintiff, and those of the defendant,—the instance, as it is called in Scotland; and next, the conclusions of the action, i. e. what the plaintiff asks to be decided in his favour. The allegations in fact, which form the grounds of action, are next set forth in the form of an articulate declaration, or condescendence, as it is called, to which are appended the plaintiff's pleas in law, or the propositions in law, as applicable to the facts, on which he rests his suit; both of these constituting part of the summons. The defendant pleads in defences—a pleading constructed in the form of articulate answers to the plaintiff's condescendence, and having appended, when necessary, an articulate statement of the facts on which he founds his defence, together with his pleas in law, both dilatory, and peremptory—or on the merits of the cause. The pleadings at this stage are transmitted to the judge in chambers to be advised. If dilatory pleas or defences have been stated, he may either dispose of them at once, or, if further statement of fact be necessary for their disposal, order such additional pleading, and then

give judgment; or he may reserve the consideration of the dilatory pleas till a future stage of the cause, in which case any statement of fact in regard to them is included in the record of pleadings on the merits. When the parties consent, the record may be closed on the summons and defences; but when they do not consent to hold these as their final and completed pleadings, then the record is made up "by the revisal by the pursuer of the condescendence and pleas in law annexed to his summons, appending articulate answers to any separate statement by the defender, and revisal by the defender of his defences." When these revised pleadings have been lodged, they are transmitted to the sheriff, who orders the attornies for the parties to attend him either in court or in chambers, with a view to the adjustment and closing the record. At that meeting he may allow such alterations and amendments on the pleadings as he may think proper, and may at once close the record, or appoint a day on or before which it shall be closed. The record of pleadings is closed by the judge writing on what is termed "the Interlocutor Sheet," which contains all the orders of court during the progress of a cause, "Record closed," and appending thereto his signature.

Now we do not object to this form of pleading in itself. On the contrary, it seems, on the whole, to be well adapted for the statement of the opposing allegations of the parties to the suit, and the disclosure of the grounds of action and defence, whether in fact or in law; and to be both simple and logical under a system, the object of which is not, as in our common law courts, the development of an issue by the direct operation of the pleadings themselves. But the question is, why it should be absolutely required in *all* actions for sums above 8*l.* 6*s.* 8*d.*, while actions for sums not exceeding that amount may be tried, and are every day disposed of to the satisfaction of the parties and the public, without any formal pleadings at all. To this question we shall afterwards have occasion to advert.

The true and very serious objections to the forms of procedure in the sheriff's ordinary court, are the delay and the expense which, under the present system, are unavoidable, and to these we now proceed to call the attention of our readers. When the pleadings have been brought to an end, by the record being closed in the way described, the cause is sent *avizandum*, as it is termed, to the sheriff substitute, that is, is transmitted to him in chambers, for the consideration of its further disposal. If the question at issue, as apparent on the pleadings, be purely one of law, he may dispose of it either at once and without any argument from the parties, or after an oral or written debate. In

either case the party against whom judgment is given has a right, within a certain number of days, to *reclaim*, i.e. to give in a petition in writing, in an argumentative form, against the decision. An answer to this, if thought necessary, is ordered, and the sheriff substitute, after consideration of these papers, pronounces a second judgment, either adhering to, reversing, or altering his previous one. From this decision the unsuccessful litigant has a right of appeal, by a simple note or minute, without argument, to the sheriff principal, and his determination is final in the inferior court.

But if the question between the parties resolves into one of fact, then a proof is allowed of their respective allegations of fact, in so far as not admitted on the other side. This proof is directed by the Act of Sederunt of 10th March, 1849, confirming previous regulations to the same effect, to be taken in the presence of the judge himself, except where that would interfere with "the other and more important functions of the judicial or magisterial office which cannot be delegated;" in which case it is allowed to proceed before a commissioner appointed by him for the purpose. And in all the larger counties the latter course is almost uniformly followed, as it would be absolutely impossible for the sheriff substitute, in consequence of his multifarious duties of a different kind, to preside personally at the leading of the evidence. A day for commencing the proof, and another for reporting it, when completed, to the clerk of court, is fixed by the judge, and upon the first of these the witnesses must be in attendance. By the Act of Sederunt last mentioned, it is provided, that "the proof, when once commenced, shall, as far as possible, be proceeded in continuously, *de die in diem*, until the same shall be brought to a conclusion." The evidence of the witnesses is reduced to writing; and the judgment of the commissioner upon every question that arises as to the admissibility of a witness, or the competency of the interrogatories proposed to be put to him, may be appealed against to the sheriff substitute, from whose decision a second appeal may be taken to the sheriff principal. There is no provision under the existing regulations that these appeals shall be reserved till the termination of the proof (though in some counties, it is believed, a practical order to that effect has been made by the sheriff); and it is plain, therefore, that where numerous successive appeals are taken, the period fixed for reporting the proof may expire before the proof itself can be concluded. This necessarily leads to the prorogation or prolongation of the time for reporting it; and these prorogations are in some cases so repeated, or so long, that the proof is not brought to an end, and reported to the court, until

months after the period originally assigned. We believe we may state, without fear of contradiction, that there have been instances in which not only months, but years have passed away before the proof came to a close.

The proof having at last terminated, the depositions, along with the closed record of pleadings, and any other writings that may have been produced by the parties—"the whole process," as it is called—is laid before the sheriff substitute for disposal. He may then either hear the attornies for the parties *viva voce* upon the evidence, or, if the points arising on it be nice or difficult, or the cause embrace mixed questions of law and fact, he may, and this is a common course, order an argument in writing in the shape of what are termed minutes of debate. These papers in cases of importance are often drawn by counsel; but a judgment pronounced after consideration of this written argument, does not take the cause out of the power, nor carry it beyond the control of the sheriff substitute. As already stated, the party against whom he has decided, and indeed both of the parties if each has, or thinks he has, ground to be dissatisfied, instead of being bound to go at once to the sheriff principal, has a right to *reclaim* to the substitute against his own judgment. The reclaiming petition (which cannot be disallowed), and the answers to it, are a new written argument generally on the whole cause, and it is not till another judgment has been pronounced upon it, that the final appeal is taken to the sheriff.

From what has been said it is plain, that great delay must often and unavoidably take place in the disposal of a suit; a delay which, moreover, is further increased by the power possessed by the attornies of granting to each other prolongations of the time fixed by the court for the lodging of the successive pleadings to an almost unlimited extent. Nor is this all, for against nearly every interlocutory or incidental order of the sheriff substitute during the course of the procedure, however little it may affect the real merits of the question at issue, there is a right first to reclaim, and then to appeal. The result of all this is but too often, in practice, just what might have been expected. The cause from step to step "drags its slow length along;" its progress ever and anon interrupted by a prorogation, a reclaimer, or an appeal, until the patience and the purses of the unfortunate litigants may be alike exhausted. It is true, that the judge, by a strict and energetic exercise of the powers put into his hands, may, to a certain, though only a trifling extent, prevent or limit this excessive dilatoriness; but the evil, in a great measure, he cannot remedy. Parties, by the present law, have certain rights conferred upon them as to the mode of con-

ducting a suit, and these a keen and determined litigant or practitioner may exercise in such a way as it is altogether beyond the power of the judge to control.

But an equally serious objection to the present form of procedure in the sheriff's ordinary court, is the concomitant one of expense.

In the Small Debt Court, the necessary and unavoidable court expenses, even in a litigated cause, amount only to the sum of four shillings and one penny sterling. This is necessarily increased when proof is brought forward by either party; for the witnesses must be paid for their attendance (the allowance given them, however, being very small), and the officer of court for summoning them; and so where action is brought for a few shillings the costs *may* sometimes exceed the sum sued for. But in scarcely any instance where the demand reaches 1*l.*, and never when it is at all near the full amount of 8*l.* 6*s.* 8*d.*, is it possible that the costs can exceed or even approach the sum sued for.

Of course, when judgment is given for a sum much smaller than that claimed, or for a merely nominal one, as in trifling actions for damages, the result may be different; but the general rule as to expenses is what has been stated.

But the case is very different in the ordinary court. It is impossible for us here to give an explicit or detailed statement of the expenses in the latter, for these must vary according to the circumstances of each particular cause; but, from what has already been stated as to the form of pleading and procedure, it is plain, that in every instance they must be very considerable; and, what is equally plain, in many cases, the costs must far exceed the sum, or the value of the right actually in dispute; for, it must be remembered, that wherever the amount sued for exceeds, by however small a fraction, 8*l.* 6*s.* 8*d.*, action can be brought only in the ordinary court; and the expense of litigation may be, and sometimes is, nearly the same, whether that amount be nine, ninety, or nine hundred pounds. Take as an example of this the following case. Very recently an action was brought in the Sheriff Court of one of the most important counties in Scotland in these circumstances. A creditor in executing the diligence or distress, termed poinding, against a debtor, among other effects poinded or distrained a cow. The animal was exposed to sale under a judicial warrant, and no bidder appearing at the sale, was given over to the creditor in part satisfaction of his debt. A third party then came forward, who alleged, that the cow was his property, and not that of the debtor, in whose possession it was at the time of the poinding, and consequently had been illegally distrained; and on that ground brought an ac-

tion against the creditor for re-delivery of the cow, or payment of the price, he, the plaintiff, asserted he had originally given for it, which was 9*l*. Certain dilatory defences were pleaded by the defendant but were repelled, and the question turned substantially upon the right of property; upon this the parties joined issue, and upon it a proof was allowed. The cause ran the ordinary course, through appeals during the proof, minutes of debate, reclaiming petitions, and appeals to the sheriff principal; and judgment was ultimately given, more than two years after the commencement of the action, in favour of the plaintiff, with modified costs. The bill of costs given in by him amounted to 30*l*.; 5*l*. were struck off from it by the auditor (an officer of court whose duty it is to tax, or examine, and report on the expenses claimed in a suit), and the amount was further modified by the judge to 20*l*. Thus, in an action conducted in the usual form, and where no proceeding was taken which could have been absolutely prohibited by the court, the expenses claimed by the plaintiff alone were more than triple, and those actually awarded more than double the amount of the sum sued for. The losing party, in addition to this, had of course to pay the costs he had himself incurred to his own attorney.¹

We believe what has now been stated is sufficient to show that some remedy is most urgently demanded for the evils both of delay and expense attending the existing forms and procedure in the sheriff's ordinary court; and we now proceed to suggest very shortly, and with all modesty as becomes foreigners, one alteration which is certainly simple, and which we have no doubt would, to the extent of its operation, be both beneficial and acceptable to the public in Scotland. This is no more than the extension of the sheriff's summary civil jurisdiction. In this country, debts up to the amount of 50*l*. may now be recovered in the County Courts in a cheap and expeditious manner, while in Scotland, such a privilege is enjoyed only in the case of the paltry sums we have mentioned. Now, why should this be so? Why should a party in Scotland who claims a debt exceeding by a fraction 8*l*. 6*s*. 8*d*., be obliged, either to restrict it to that sum, so as to enable him to sue in the small debt court, or to

¹ The case mentioned is no unusual or exceptional one. Even where no appearance is entered for the defendant, and judgment is allowed to be pronounced in absence, the expense is considerable. From inquiry we have ascertained that the costs of such a judgment, in actions for sums between 8*l*. 6*s*. 8*d*. and 25*l*., is generally 2*l*. or 2*l*. 10*s*. In defended actions for the same sums, where the cause is fully litigated, the costs on one side alone, we believe, may be safely stated to range on an average from 20*l*. to 25*l*. at least. There have been causes under 25*l*. where the taxed costs amounted to more than 50*l*. In actions for sums above 25*l*. the expense is still greater.

embark in the tedious and expensive litigation of the ordinary one? Surely it is no more than justice that our neighbours should have privileges in this matter corresponding to those we now possess. It cannot be said that the county judges in Scotland could not be safely trusted with an enlargement, or rather alteration, of their judicial duties of such a kind; for, as was explained in our last number, their jurisdiction is already far wider and more important than that of the County Courts in England; and it is not an increase of power, but a change of procedure merely that we advocate. We do not say to what precise amount their summary jurisdiction should reach, but it does not appear that there could be any objection to its being at once extended at least to 25*l.*—the sum which at present forms the limit of the privative or exclusive jurisdiction of the inferior tribunals in the first instance. That some alteration such as that suggested must sooner or later be adopted, there cannot be a doubt. The public in Scotland are now awakening to their own interests in this matter, and the recent sweeping changes upon the system of legal administration here, which have, on the whole, worked so well in practice, give them a just claim to the possession of rights similar to our own.

Should such an extension of the sheriff's summary jurisdiction be resolved upon, and carried into effect, it is believed that some alterations upon the present form of procedure in the Small Debt Court would require to be adopted; but what these ought to be, must, of course, be left to the consideration of Scottish lawyers. There are two points, however, on which, although not very intimately acquainted with the subject, we think we may safely speak. The first of these is the right of appeal. At present the decision of the judge in the Small Debt Court is practically final and irreversible; but were the forms of that court extended to a higher class of cases, a right of appeal to some superior tribunal would probably have to be conceded to the litigants. An appeal from the decision of the judges in our own County Courts, in regard to questions of law, and the admission or rejection of evidence, is now allowed in all causes where the debt sued for amounts to more than 20*l.*, and it can scarcely be thought that the people of Scotland, who, under the exception just stated, have been so long accustomed to a right of appeal from the judgment of the inferior courts of an almost unlimited kind, would be content, even for the sake of economy and dispatch in the disposal of their law suits, to be shut out at once from the possession of their ancient privilege. The right of appeal from the local courts, to a certain extent, moreover, we should conceive to be as necessary in Scotland as it is felt

to be here ; not only as a check upon the discretion, the temper, or the powers of individual judges, but to secure uniformity in the interpretation and administration of the law, and to prevent the formation of, it might be, a multitude of independent, inconsistent and conflicting provincial systems or codes of jurisprudence. What the extent, or the limits of the right of appeal in Scotland ought to be, however, and in what form, or to what court the appeal ought to be made, it is for others to determine. Those only who are intimately acquainted with the Scotch judicial system, and its workings in practice, can competently decide on these important questions.

The second point is the propriety of admitting counsel or attornies to appear for the parties. By the statute regulating the practice of the Sheriff's Small Debt Court (1 Vict. c. 41, s. 14), it is provided, that procurators shall not be allowed to appear except on cause shown, which must be entered on the record book of court. This regulation, even in the petty class of cases at present tried in a summary form, we believe, is often felt to be most inconvenient, and it is not strange that it should be so. Parties, especially in rural districts, not seldom come into court with only a vague notion of the proper grounds of the action or defence. Of anything like a logical, or even an intelligible statement of the relevant facts of the case, they are often incapable, while of the evidence by which these facts ought to be proved, or of the law applicable to them, they are wholly ignorant. The result is, that very frequently the judge knowing nothing of it beforehand, has, upon such information as he can manage to obtain by his own inquiries at the moment, to undertake the management of the whole cause. He has to ascertain, and place before his own mind, as far as he can by questioning the parties, the matters of fact disputed, or, in other words, to conduct the pleading ; and then, if proof be necessary, to conduct it also, on both sides, by personal examination of the witnesses ; for of leading the evidence the litigants themselves are generally incapable. Such a system, whatever it may be to the suitors, cannot be very satisfactory to the judge, who must sometimes feel that he is deciding a cause, with the true merits and bearing of which he is but imperfectly acquainted ; and that justice may not have been done to the parties from a simple but unavoidable misapprehension of their statements. Under the contemplated extension of the sheriff's summary jurisdiction, therefore, it would certainly be expedient to allow the appearance of counsel or attornies for the parties ; and this, while it would facilitate the intelligent administration of the law on the part of the judge, would, at the same time, act

as a salutary check upon his interpretation and enunciation of it. Of course this proposed change would necessarily add somewhat to the expense of the procedure, but supposing the same fees to be allowed as in the County Courts here, the costs would still be trifling compared with those of the ordinary court in its present form.

We have now to ask the attention of our readers—and especially our English readers—to another matter connected with the County Courts in Scotland, which was shortly alluded to in our last number; and it is one, that we feel constrained by a simple sense of justice to bring under their notice, as being not less a proper subject of reform, than any of the others already spoken of. This is the present amount of the salaries of the judges. “Look on this picture, and on this.” The profession is aware of the powers and duties of the judges of our own County Courts;—that their jurisdiction extends only to the trial of civil causes where the sum sued for does not exceed 50*l.*; that they have no criminal jurisdiction of any kind; that they are not bound to reside within their districts; and that they are not debarred, by positive prohibition at any rate, from practice before the superior courts. The highest salary at present allowed them is 1200*l.*, and the lowest 1000*l.*, a year, and so far is this from being grudged them, that the proposal to raise the maximum allowance to 1500*l.*, has, we believe, met with general approval. Contrast with this the state of matters in Scotland. There the county judges—we speak now of the sheriffs substitute, the true local judges—have jurisdiction in civil causes of almost every kind to an unlimited amount; they have a criminal jurisdiction extending to almost every offence, except those embraced by the pleas of the crown; they have *ex officio* to take a share (and that often the most practical one) in the general public business of the county; they are bound down in the strictest manner to constant personal residence; and are by statute absolutely prohibited from engaging in, or drawing profits from, any business or profession whatever apart from their judicial office. And for all these onerous and responsible duties what is their remuneration? On an average, and after *ten* years’ service, about 400*l.* a year, under deduction of the income tax; out of which allowance has to be defrayed the whole expense of holding their Small Debt Circuit Courts.¹ Why, we should be inclined

¹ The lowest annual salaries commence at 250*l.*, and the highest (with two exceptions) at 450*l.*, and rise at the rate of 5*l.* a-year, in *ten* years to 300*l.* and 500*l.* respectively. The salaries of the sheriffs substitute, in Edinburgh and Glasgow, begin at 550*l.* and rise to 600*l.* in the same period. The average of the whole, at the full amount, is 416*l.*

to call this ludicrous, if we did not think it to be almost monstrous. Here is a body of educated gentlemen, trained up to the profession of the law, the chief judges and magistrates in their respective counties, in whom is reposed the administration of justice both civil and criminal to a very wide extent; who, in the discharge of their duties, are unavoidably brought into frequent contact and association with the nobility and gentry, and who must, as far as possible, preserve a *status* and position in society corresponding to their situation and official rank, remunerated in a way that would be scouted at by the superior officers of any respectable railway or insurance company. And not only so, but it is an unquestionable fact, that in many, and those the most important counties, the emoluments of the sheriff substitute are very considerably inferior to those of the clerk of court, and the procurator fiscal, or public prosecutor for the district,—the latter of whom, moreover, is at full liberty to carry on any private business he pleases. We put it to any man of common sense or common justice to say, if this is a state of things which, either in equity or expedience, should be allowed to continue any longer. Doubtless the proposal of an increase of salary to these judges may be met with the usual, but most illiberal argument; good and efficient men have been obtained at the existing rate of remuneration, and therefore there is no reason for raising it. Now it is acknowledged that the present sheriffs substitute are, on the whole, well qualified for their office; and that many of them are men of much learning and ability; but the question is not, whether that is the case, but, whether their emoluments are such as ought in justice to be awarded to judges occupying so important a position, and possessing powers, and burdened with duties of so very extensive a kind. No one on this side the border, at any rate, we believe, could in conscience answer that question in the affirmative. Why should so wide a difference be made between England and Scotland in this matter? We confess we can see no justifiable or even possible reason for it, and sincerely trust that an end will soon be put to so strange an anomaly. Let the profession in Scotland speak out on this subject, and they will most surely have the sympathy and the support of their brethren in England; and let the public speak out too, for there cannot be a doubt that the comparatively small increase of expenditure that would be necessary to raise their salaries to a fair amount would be far more than counterbalanced by the benefits resulting from the added dignity and independence of the provincial judges.

Our own opinion is, that the maximum salary of the sheriffs substitute should at once be raised at any rate to 1000*l.*—only

the minimum allowance of the County Court judges here. There is surely nothing extravagant or beyond the bounds of modesty in such a proposal. And this, were it acceded to, while it would give the present judges no more than a fair remuneration for their labours, and place them on something more like the proper footing they ought to hold in their counties, would secure in future the services of men still more eminent in the profession. It might be shown by a short statistical statement, that a comparatively trifling sum would be sufficient to afford means for the increase of salary now proposed: but on that we shall not enter at present. We trust, however, that now, when so much is said both in parliament and out of doors on the subject of law reform, this matter will not be left long unnoticed; and that an act of simple justice will soon be performed to a body of judges, whose merits and the benefits of whose services are so well appreciated by the people of Scotland.

ART. III.—FOSS'S JUDGES OF ENGLAND.

MR. FOSS, as he proceeds with his arduous researches, is picking up some bits of much antiquarian interest. His book must not be judged of as a history of all the judges so much as in the light of fragments of the history of their times. As we before stated, nobody would be at the pains of reading ever so correct a life of such men and judges as Jenney, Ralph Pole or John Portington, or scores of others who figure in these volumes, and whom—having read all Mr. Foss's diligence has been able to collect respecting them—one wishes to forget as soon as possible, it being expedient in these busy days to disencumber one's mind of all useless lumber. Other parts of this work, however, contain much interesting matter, and tend to throw light on existing institutions. Here, for example, is what Mr. Foss tells us of the origin of Lincoln's Inn, p. 255.

"Lincoln's Inn first claims our notice, as its records afford the earliest proof of its antiquity. The history of its site is involved in some obscurity.

"It occupies a large space of ground on the west side of Chancery Lane, extending almost from Holborn to Carey Street. The extreme north, near Holborn, formed part of the site of the old house of the Black Friars, before they removed to their new convent in London, about the year 1276; and the extreme south, nearest Carey Street,

formerly called Lincoln's Inn Little Fields, or Fickett's Fields, and now called the New Square, belonged to, or was claimed by, Mr. Henry Serle, as his property, until the year 1682, when, under a special agreement between him and the society, it was built upon in its present form. The intervening space belonged to Ralph de Neville, Bishop of Chichester, the chancellor of Henry the Third. Whether this, as is commonly supposed, was the land comprehended in the grant to that prelate on November 17, 1225, under the description of 'a certain place, with the gardens and appurtenances, in New Street,' which had been forfeited by John Hurlicum, may perhaps be open to a question, since it is apparent from the words of the grant, that the bishop at that time possessed other land *opposite* the garden; and the remaining 'houses and lands' of John Hurlicum, in New Street (specially excepting the garden granted to the bishop), were conferred by King Henry, in 1235, on the House of Converts, now the Rolls. Neither of the grants state on which side of the street the property was situated; but as the House of Converts was on the east side, it is far from improbable that John Hurlicum's ground was on that side also. It is possible, however, that the narrow strip on the north side of Carey Street, extending from Chancery Lane to the *mews*, called Star Yard, which is the only part of the Rolls estate on the west side of Chancery Lane, may have been part of the grant of Herlicum's property to the House of Converts, but it does not seem of sufficient extent to come under the description of 'domos et terras.'"

Quite sufficient, if it were but a garden ten yards square. How else is it to be described?

The attainder of Haverhyll is very problematical. Matthew Paris certainly gives it no countenance. Henry III. had given him much preferment, and even at his death he seems to have retained the canonry of St. Paul's. In his epitaph he is described as "the Treasurer of the King;" and a few years before his death he received the king's mandate to feed 15,000 poor, in St. Paul's Churchyard, at the celebration of the conversion of that apostle.

"By plan No. 1, published in the Sixth Report of the Commissioners for the improvement of the metropolis (1847), it appears that the Bishops of Chichester have still property on both sides of Chancery Lane, and that by far the greatest portion of it stands at present on the east side. Nevertheless, there is no doubt that the "noble palace" erected by Ralph de Neville, was on the west side of New Street, or Chancery Lane, whether the ground on which it was built was part of John Herlicum's forfeiture, or the Bishop's original property. There that prelate died in 1244; and there his successor, Richard de la Wicke, who died in 1253, is known to have resided while in London. The next recorded inhabitant is Henry de Lacy, Earl of Lincoln; but we have no means of ascertaining the commencement of his occupancy. He did not attain his majority till 1268, 52

Henry III, about which time, he being then married, perhaps took up his residence there. It was probably on account of the contiguity of the premises, that soon after the removal of the Black Friars to the City of London, he obtained a grant from King Edward I., in 1287, of their house in Holborn. There, according to Stow, 'he built his inn, and for the most part lodged there;' but it is somewhat uncertain, from the language used by the annalist, whether the house he erected was in the place of or in addition to the palace of the bishop. That he resided there in 1296 appears from an account, existing in the office of the Duchy of Lancaster, of the profits arising from and the expenditure upon the garden, which must have been of very considerable extent. It was then inclosed by a paling and fosse, with a pond or vivary in which pikes were preserved; and was managed by a head gardener, who had an annual fee of fifty-two shillings and two pence, with a robe or livery; and numerous assistants, whose collective wages amounted to five pounds per annum.

"Dugdale says, that 'the tradition is still current among the antients here' that the Earl first brought the professors of the laws to settle in this place; but, he adds, 'direct proof thereof from good authority, I have not as yet seen any;' and we learn from the same writer that the Earl died in this mansion in 1312, 5 Edward II.; a fact which seems to offer a sufficient contradiction to the tradition."

Not by any means. Why should it? The mansion was of immense size, and nothing is more probable than that the Earl occupied apartments in it long after he brought the students to take up their abode in the remainder of the building. Mr. Foss proceeds, moreover, to show now in another way that Dugdale's "tradition" may have been true.

"There may however have been two mansions, one built by Ralph de Neville, and the other by the Earl of Lincoln. By the junction of the two properties in the time of the latter, and by his long continued occupancy, extending into three reigns, his name became naturally attached to the estate; and, though there is no trace of its being possessed by any other Earl of Lincoln, it has retained that appellation ever since.

"We have evidence that the Bishops of Chichester resumed their occupation of the mansion after the Earl's decease; for we find that Robert de Stratford, Bishop of Chichester, on being made Chancellor on July 12, 1340, 14 Edward III., took the Great Seal with him to his house in Chaunceler Lane, 'ad hospitium in vico, qui vocatur, Chaunceler Lane.'

We confess we do not see why. Mr. Foss has a funny way of upsetting his theory and then reinstating it. After the first introduction of the law professors by the Earl of Lincoln, there is little doubt that the buildings grew with their inmates, and not merely two, but doubtless many, "mansions" were erected. At any rate the records in the see of Chichester show that

portions of the land were leased by it to the law students, the bishops retaining a part for their town residence. It is exceedingly unlikely that had the students owed their establishment to any later possessor than the Earl of Lincoln, that they would have called their Inn exclusively after him, passing over their benefactor.

The following sketch is a fair specimen of Mr. Foss's style, and gives a notice of more than average interest:—

*“ William Gascoigne, Chief Justice of King's Bench, 1400.—*The family of Gascoigne, the derivation of which is sufficiently shown in the name, is very ancient, no less than seven successive Williams being recorded in the pedigree before the chief justice. The judge's father was settled at Gawthorp in the parish of Harewood, in Yorkshire, and there the judge was born as also were his four brothers and two sisters. In which of the legal seminaries he received his instruction it is impossible to determine. Fuller says he was of the Inner Temple, but adduces no authority; and in the MS. account of Gray's Inn, written in the seventeenth century, to which I have before adverted, we find his name among the undated and supposed readers of that society.

“ He was old enough in 48 Edward III. 1374, to be mentioned as an advocate in the Year Books; and his pleadings hold a prominent place in Bellewe's Reports of the Reign of Richard II. In the twenty-first year of that reign, 1397, he was appointed one of the King's serjeants; and at the close of the following year he was among the twenty attorneys assigned for different courts or jurisdictions by Henry of Lancaster, Duke of Hereford, on his banishment from the kingdom in consequence of the quarrel with the Duke of Norfolk. The letters-patent making this appointment were revoked by King Richard on the death of Henry's father, John of Gaunt, four months afterwards; when the infatuated monarch seized the duke's lands, notwithstanding his declaration that Henry's succession to his inheritance should not be interrupted, Gascoigne is mentioned as a trustee of one of the duke's manors in his will, showing therefore, that he was in his legal confidence.

“ Henry IV. had not been fourteen months upon the throne before he had an opportunity, by the resignation of Sir William Clopton, of rewarding Gascoigne for his services. His patent, as Chief Justice of the King's Bench, is dated November 15th, 1400, 2 Henry IV. * * * In 1405, the army raised by Richard Scrope, Archbishop of York, and Thomas Mowbury, Earl Marshal, having been dispersed by the capture of the two leaders, they were taken to the royal presence at Bishop's Thorpe, the primate's palace, when the king commanded the chief justice to pronounce on them the sentence of death, Gascoigne resolutely refused to obey, saying, ‘Neither you, my lord, nor any of your subjects can, according to the law of the realm, sentence any prelate to death; and the earl has a right to be tried by his peers.’ The king, however, was not to be stopped, and

he found a willing instrument in a knight of Yorkshire, named Sir William Fulthorpe, a son, we think, of the judge of the last reign, but in no way himself connected with the law.

"Henry on reflection could not help approving his judge's boldness, and so far from withdrawing his confidence from him, seems to have been in the familiar habit of putting supposed cases for his opinion. According to a report in Plowden he demanded of the judge, 'if he saw one in his presence kill J. S., and another that was innocent indicted for it before him and found guilty of his death, what he would do in such a case?' And he answered that he would respite judgment, because he knew the party was innocent, and make further relation to his majesty to grant his pardon; and the king was well pleased that the law was so; but then he could not acquit him and give judgment of his own private knowledge."

Mr. Foss next enters on a very conclusive argument to prove that Shakspear and Lord Campbell are alike wrong in extending Gascoigne's dynasty as Chief Justice into the reign of Henry V. The poet makes the king re-invest the inflexible Chief Justice with "the balance and the sword;" and Lord Campbell says he "can prove to demonstration that Sir W. Gascoigne actually filled the office of Chief Justice under Henry V." On the contrary, Mr. Foss shows that the demonstration in question consists only in the mention of him as Chief Justice in the summons to parliament, dated the *day after the* accession of Henry, and before he could have been possibly superseded. In that very parliament, only six weeks afterwards, his place was filled by Sir William Hankford, whose name also occurs at the same time as presiding in the King's Bench in the Year Books. Hankford's appointment is dated moreover March 29, 1413, only eight days after the king's accession. On Sir W. Gascoigne's monument also he is styled "*Nuper* Capit. Justic. de banco Hen. *nuper regis Angliæ quarti.*" There certainly therefore can be no doubt that Lord Campbell has fallen into one of those little oversights which occasionally blemish biographies. Henry V. was by no means a great-minded monarch, and took the earliest possible opportunity of resenting the indignity he had received when prince at the hands of this excellent and upright judge, who died 17th December, 1419, and was buried at Harewood, where his mutilated monument still remains.

We must find room for one more sketch.

"*William de Courteneye, Bishop of Hereford and of London, Archbishop of Canterbury—Chancellor, 1381.*—William de Courteneye was the grandson of Hugh de Courteneye, Earl of Devon, who was justice itinerant in the last reign. His father Hugh, the second Earl of that name, died in 1377, and his mother was Margaret, daughter of Humphrey de Bohun, Earl of Hereford, by Elizabeth,

daughter of Edward the First. William, the fourth son, was born at Exminster, near Exeter, about the year 1327. He pursued his studies at Oxford, where he took the degree of Doctor of Civil Law, and was afterwards Chancellor of that University. Educated for the priesthood, his connections soon procured him many rich benefices, among which were prebends in the three cathedrals of Exeter, Wells, and York. From the last he was elevated to the bishopric of Hereford, by papal provision, on August 17, 1369, and after presiding over that see for nearly six years, he was translated to London on Simon de Sudbury being removed to Canterbury.

"Among the favourers of Wickliffe, whose opinions at this time gained so much ground as to alarm the Church, was John of Gaunt, Duke of Lancaster; and when, towards the end of Edward's reign, Bishop Courteneye, in obedience to the Pope's mandate, summoned the reformer to be examined, the duke attended him to St. Paul's church, where the meeting was held. There some violent words passed between the duke and the bishop, which ended in an unseemly threat on the part of the former. The assembled people, who as yet cared little for the religious question, fancying their bishop in danger, prepared to defend him, and by their clamours compelled the duke, who was no favourite with them, to retire. The populace outside, excited by other reports to his disadvantage, joined in the outcry; and the ferment was not appeased till they had broken open the Marshalsea prison, ransacked the duke's house in the Savoy, and contemptuously dragged his arms through the streets.

"Bishop Courteneye was appointed Chancellor of England August 10th, 1381. On the 5th of the same month the bishop received the king's assent to his election as archbishop of Canterbury; the temporalities of which, however, were not restored to him till October 23rd.

"Walsingham declares that he was dignified with a cardinal's hat, but the doubts of others seem to be supported by the absence of all notice of the fact in the epitaph inscribed on his gravestone in Maidstone church. This edifice he had entirely rebuilt, and had restored the church of Mepham, besides many liberal donations, amongst others to the church of Exminster, his native town.

"He died at his palace at Maidstone on July 31st, 1396, and was buried in the church there, in compliance with his testamentary injunctions, which declared that he did not think himself worthy of a resting place in his cathedral church.

The sketches of reigns are somewhat laconic. Four pages and a half suffice for Richard III., and the mention of all judicial functionaries therein. Certainly not much could be said: and as the book proceeds to later times we shall have ampler details in a richer field.

ART. IV.—CRIMINAL CHILDREN.

SCHOOLS for these poor outcasts have been often suggested instead of prisons. It has been thought that the ethics of Christianity should extend our philanthropy even to the most depraved and hopeless classes, and that our sympathies, usually alive enough to all respectable misfortune, are never so fitly applied as when they follow guilt to its dens, and deal with debasement. The appliances of benevolence are high and noble in proportion as its objects are low and vile. The highest province of education, for instance, is to teach and train and reclaim our young thieves and paupers; and the lowest, to school genteel youth. These are notions which twenty years ago would not have been tolerated in intellectual circles. The sentimental humanities of the last half century would have been much shocked at such "extraordinary notions." They have been less peculiar of late, and it has been found out that the said sentimental humanities and genteel benevolences, though they have provided schools and soup kitchens for honeysuckle cottagers, have allowed heaps of vice and filth, physical and moral, to culminate among us, which it will take a very different kind of charity to get rid of.

Miss Carpenter, Mr. Davenport Hill, Lord Lyttleton, Mr. Hubback, Mr. M'Gregor, Mr. Sydney Turner, Mr. D. Power, Sir John Pakington, Rev. Mr. Osborne, and one or two like-minded people in this respect, got up a conference at Birmingham, last December, to consider how to establish some reformatory and industrial schools for criminal children.

This conference was very cheerfully attended; good folks came from all quarters, and there was a muster of earnest sympathies from north, south, east and west. Here are some names to prove it :

Lord Lyttleton, Hagley; Sir John Pakington, M.P., M. D. Hill, Esq., C. B. Adderley, Esq., M. P., R. Monckton Milnes, Esq. M.P., W. Scholefield, Esq., M.P., D. Power, Recorder of Ipswich; W. Rathbone, Liverpool; George Holt, R. V. Yates, R. E. Harvey, and Joseph Hubback, Honorary Secretary of the Industrial Schools, Liverpool; George Edmonds, Clerk of the Peace, Birmingham; W. W. Whitmore, Dudmaston Hall, Bridgnorth; Joseph Sturge, Alderman Martineau, Rev. G. S. Bull, Rev. S. Gedge, and R. K. Douglas, Birmingham; J. Fletcher, Inspector of Schools; Rev. F. Bishop, Minister of the Liverpool Domestic Mission; C. H. Bracebridge, Atherstone Hall; Rev. T. Carter, Chaplain to the Liverpool Gaol; Rev. E. Chap-

man, Honorary Secretary of the Bristol Ragged School; Rev. J. Clay, Chaplain of the Preston Gaol; Rev. J. Field, Chaplain of the Berkshire Gaol, Reading; W. Locke, Ragged School Union, London; Rev. R. L. Carpenter; J. W. Nutt, Honorary Secretary of the York Industrial Ragged School; Rev. W. C. Osborne, Chaplain of the Bath Gaol; Rev. H. T. Powell, Chaplain of the Warwick County Asylum; Jelinger C. Symons, Barrister, Inspector of Schools; John Taylor, Manchester; Alexander Thomson, Banchory, Aberdeen; Rev. Sydney Turner, Chaplain of the Philanthropic Farm School; Barwick Baker, of Harkwick Court, Gloucestershire; G. Bengough, Gloucestershire; J. M'Gregor, Ragged School Union, London; Rev. J. Reader, Charles Jenner, Edinburgh; Thomas Reynolds, Bristol; H. Grant, Bristol; T. Osler, Clifton; Rev. W. Grier, Stourbridge; W. Morgan, W. Potter, Minister to the Poor, Church of the Saviour, Birmingham; and J. Corder, Clerk to the Guardians, Birmingham. Several ladies were also present, among them being the Hon. Miss Murray, and Miss M. Carpenter, author of that excellent work on "Reformatory Schools."

There were some forty or fifty besides. This gathering and the spirit of earnestness were very gratifying, but as to active business they did not do much. There was a vast deal of speech-making, and a wonderful deal of time wasted in long statements of how necessary it was to deal with the criminal juveniles, and how much might be done to reclaim them. All of which every man and woman in the conference knew right well before they came there. In fact it was their knowledge of it that brought them. The thing which was wanted was scarcely begun, namely, how to set about the remedy, and what it should be. If there be one set of facts more thoroughly established than another in the minds of all people who have given the subject consideration, it is this:

1. That the juvenile offenders are a very numerous and abominably neglected class.
2. That they are reclaimable.
3. That prison punishments make them worse.
4. That we should train and reclaim them in reformatory establishments adapted to their case.

Starting with these assumptions as postulates, and things which it is puerile and a great loss of time to keep on saying and proving, inasmuch as nobody denies them, let us gather from the mass of speeches at Birmingham some few fragments on the discussible and questionable points of the subject.

Mr. Hill, in a most eloquent speech, said :

"Then let society enforce the claim on the parent, not so much for pecuniary indemnification—although that is by no means unimportant—as to vindicate a great principle, that of preventing any man from obtaining a benefit out of his own wrong-doing. I would, therefore, leave no stone unturned to extract from him the maintenance of that child whom he has brought into existence. Thus much is enough to show that while the treatment of adults is subject to the great contrariety of opinion to which I have adverted, the treatment of juvenile prisoners is, with a wonderful degree of unanimity, settled as to what it ought to be."

This is a great point, and cannot be too steadfastly borne in view. Mulct the parent if you want to check the criminality of the child. Put the saddle on the right horse.

"The classes in question are divided into two great and important branches: those who are living in ignorance, vice, or neglect, but who have not come under the animadversion of the law, and have not yet received any sentence from its ministers. These form the unconvicted branch. The other branch is composed of those who, for whatever offence, and before whatever tribunal, have come under the grasp of the law. Let me begin by stating our views with regard to the first branch—the unconvicted. Now, we propose that our schools—evidence respecting the utility of which will be laid before you in abundance, which are specially adapted to the wants of this class—should be put, as far as may be, on the same footing as what are called National Schools and British Schools, and other schools of a kindred character, to which, under certain conditions, grants are made of public money. In order to obtain aid for schools adapted to this first branch, it is not necessary that any change should be made in the law as it stands. All that will be required is, that the Committee of Education shall see fit to change their regulations, which at the present moment exclude that very important class of schools from obtaining assistance, or assistance to any great extent. Now, the main conditions upon which the Government, by the Committee of Education, grants assistance, are that the masters and the pupil teachers in those schools to which aid is given, shall be competent to undergo certain examinations, and thus obtain what I shall call, identifying small things with great, a *diploma* that they are competent to impart certain specified branches of knowledge—certainly a very reasonable demand in respect of the schools for the offspring of the honest and respectable classes of society. * * *

Now, the fact is that these two classes cannot be brought into connection in schools. It is a curious circumstance that the objection does not come so much from the higher class as from the lower. The children of that lower class will not place themselves in a position to be looked down upon, as they call it. Their love of education and training is not strong enough to overcome this objection; and you cannot persuade them to enter the National Schools."

Grants are wanted for Ragged Schools, and accordingly the committee which sprung out of the conference have wisely memorialised for them.

Mr. Hill then named the proposal to establish Feeding Schools. We believe this has been abandoned since. They were designed for an intermediate class, "who have been convicted of some petty offence that does not necessarily imply the loss of honesty." It has been felt, however, that this class may well be divided between the Ragged Schools or the Reformatory and Industrial Schools, which it was the chief object of the conference to further. In all such schools Mr. Hubback thus spoke of the virtue of industrial discipline:

"Diversity of occupation forms a great attraction in Industrial Schools. In my experience as Honorary Secretary of the School in Liverpool, I have seldom found any of these children afraid of work; the very fact of having something to do, and feeling that they can do and earn something, raises the mind from degradation, and tends, if I may use the expression, to unpauperise the feelings. *Make* a person industrious, and you have done much towards making him honest. But after all, let the schools be ever so good, and the occupation in them ever so pleasant, there will always be some who will not attend unless compelled to do so. To complete therefore the efficiency of the system, it will be requisite that the magistrates should be invested with power to enforce attendance."

Mr. Power, in a very able speech, advocated a purely reformatory, not a correctional, discipline:

"If you are contented with fine establishments, kept in nice order; if you are satisfied with certain work being done by lads, because they are compelled to do it—not a reasonable, but a sort of military obedience to orders, insisted upon—your efforts will fail—you will be deceived in your hopes of success—for you will be acting in opposition to God's law. No: a gentle, kind, but firm treatment, is what these poor creatures want; one that recognises in them a reasoning power, and a soul, and which brings home to them the just yet merciful teaching which the Master of us all suffered and died for. Strive for this, and if attained, you will be enabled to show the country that the reformation of 'the perishing and dangerous classes' of children is not only a possible, but an easy task. (Applause.)"

Mr. Wolrych Whitmore gave a matured and valuable scheme, whereby he showed that a large profit might be raised from the land cultivated in an Industrial School.

The Rev. Sydney Turner very ably advocated a correctional discipline as a necessary preliminary, and also government aid. He said:

"Let him then be sent to a Correctional School—a school provided, let me add, by the Government; for I know of no other way

in which the object can be attained. But the difficulty arises that such treatment of the young criminal would be, or would at least seem to be, more or less an encouragement to crime. Theoretically it may appear so, but practically this might be obviated. First, by separating the child from the parents by the power of detention, and sending it to a Correctional School *at a considerable distance*. Secondly, by requiring the parents to contribute a certain amount in aid of the support of the child while detained in the school. Let this principle be recognised as an essential that we cannot do without, and its practical execution enforced in every possible case; it will be a most effectual answer to the objection to which I have referred. A third condition should be, that the discipline of the school should be really and effectually corrective, so as to afford no temptation to the boy to qualify himself for it. A fourth would be, in every case where age and physical state allow of it, the final expatriation of the boy. I had intended to say something about the expense, but as that subject will no doubt be touched upon by my friend Mr. Symons, who is about to follow me, I shall forbear. I will only say, be on your guard with reference to very low estimates of the cost of education or reformation. Pauper schools afford no criterion whatever. Our schools are entirely different; lads of all ages, and gathered from all districts, are brought into them, mostly against their will. They come corrupted and perverted, to be reformed, and not merely trained or taught. They need close watching, and continual, though kind superintendence and control in all their habits, principles, and modes of thought. Especially don't think of realising annual profits by such schools. Directly a boy becomes profitable he is prepared enough to work on his own account, and should leave the school. With all respect for Mr. Whitmore's opinion, my experience of the expense attendant on an Agricultural School of Reform, in the wear and tear of clothes and tools, the cost of labourers to guide and teach the boys, the difficulty of making the London or Birmingham errand boy take to farm work in earnest, and the small returns that even skilful farming yields, I cannot bring myself to think of profit. The school farm should pay the rent, rates, and all the costs of cultivation, and when well managed will probably yield produce enough in wheat, meat, milk, &c., to maintain the boys, or to assist materially in doing so; but I think this will be as much as you can expect to realise. The only way to effectually lessen the proportionate expense per head, is to make the schools extremely large—an objectionable plan, for when you bring together so many as 700 or 800 in one mass, personal influence, moral and reformatory agency are at an end. But to recur to the main subject of the resolution before you, let the work be done as cheaply as you will—still what can private benevolence, individual zeal, and charity do, to cope with its extent? You have some 3000 juvenile offenders convicted for the first time; *recruited*, that is, to the ranks of the criminal class, *each year*. Consider for a moment, what an amount the class, thus annually increased, will soon reach to; consider what schools for such a number must cost, and say whether it

is not self-evident that *no voluntary efforts can suffice to meet the evil*. I confess I see nothing for it but such legislative interference as shall give us reformation as well as penalty, and shall pay the costs of the corrective training that may save the offender to himself and to society from the same national or local funds which are now charged with the expenses of his punishment—a punishment which but too frequently only hardens and destroys him. (Cheers.)”

Mr. Jelinger Symons followed on the same side and said :—

“ Let it not be supposed that we expect to make perfect artisans, or perfect agriculturists, of the children subjected to such discipline, although we give them the rudiments of the occupations we teach, but we give them habits of industry and systematic labour, which are afterwards a qualification for, and passport to, any handicraft or means of livelihood. The fact is, that whenever the child feels that by his exertions he is earning, be it ever so little, towards his own support, he is at once interested in his work—his reformation is begun. He is taught the means of self respect ; he is raised from a condition of entire dependence—a vast step in the social scale—and he feels for the first time, not only the practical value, but the dignity of labour. (Cheers.) Thus is industrial training a mighty agent in the work of moral reformation. As regards the prevention of crime, nobody can doubt that a system thus reformatory is most desirable ; but we must take care that there shall be a preface of correctional discipline, because, think as we may of it, there is something in the popular prejudice against giving to the children of crime benefits that the children of honest people do not possess. And whilst people are constantly committing crimes purposely, in order to have the maintenance of a gaol, it is obviously essential that we should deter such an abuse, and prevent giving an inducement to criminality by a preliminary stage of punishment. My learned friend, Mr. Power, said that he did not think we could punish and reform at the same time ; but it is a fact well known to those practically engaged in education, that just chastisement by no means frustrates the effects of sympathy and kindness ; and that these have often a stronger hold after than before upon the mind of the child. Such are among the best means of making these schools really reformatory. But, after all, I believe that your mere industrial training—your mere moral teaching—without religion, would be comparatively worthless. (Hear.)”

Speaking of the expenses of the Schools Mr. Symons said :—

“ Mr. Whitmore, whose views are entitled to the utmost respect, tells us that to start each school, even for one hundred children, 6000*l.* will be required ; and we must not shut our eyes to the immense expenditure our plans will necessarily require. In a pamphlet just published by the Rev. S. Robins, he shows that there are 15,000 children committed annually, but the class of children to which we allude, it is presumable, will amount to twice as many more. Now this would give about 550 to each county on the average, and cost not far short of a million pounds sterling. Where can a million be

found for these children? We cannot shut out the question. Will voluntary effort do it? Have we not found it difficult to obtain voluntary aid, even when we have got Government grants to aid us, and that for our own parochial poor, for and towards whom the sympathies of the neighbourhood are in full vigour? (Hear.) Under these circumstances, then, I believe the work can only be done by a great national effort, and by national funds. (Hear.) God forbid that I should wish to prevent voluntary effort in any way; as an abstract principle, I would rather ten times over see voluntary education than Government education; but voluntary effort never can conquer the evil; and I do not and dare not prefer the voluntary principle with ignorance and crime, to the removal of those curses by the aid of public money. No less than twenty millions sterling were paid to set free the slaves; we want only one million to relieve our poor enslaved juvenile population from the bondage of crime. Let us then apply ourselves with vigour to the only practical means of compassing the work, convinced that the money thus properly raised, at the cost of the whole people by the revenue, would be returned to us tenfold in the moral elevation of the helpless and perishing poor. Let it never be forgotten, that if they remain the *criminal* classes, we become the *culpable* classes. (Cheers.)"

The Reverend T. Carter thought legislative enactment essential to the establishment of reformatory schools.

The Rev. Francis Bishop said :

"My opinion is that we shall never be able to reach this class of juvenile offenders so as to operate effectually in diminishing their numbers, until we make the parents feel, and that through the pocket. (Hear, hear.) They must be made to understand, by being required to contribute to the maintenance of their children, when they come within the grasp of the law, that they cannot throw off with impunity the sacred obligations which the Almighty has imposed on every parent. (Hear, hear.) I will say no more than that compulsory attendance must also be enforced on the vagrant class—that class who are on the high road to crime—by some such mode as that adopted in Aberdeen."

Mr. Locke, Secretary of the London Ragged School, justly said :

"The parish or Government must help us; and it is their duty, on the score of economy, philanthropy, and self-preservation, to do so. I am inclined to think that Feeding Industrial Schools, such as we need, should be supported by parochial assessment. I have always thought that one great error in the educational system followed by the National, British, and other Schools, has been, that there is too much occupation found for the brains, and too little for the hands of the children. (Hear.) There is, in fact, too much rote teaching, and too little training to domestic and industrial habits. Children should be taught what will be useful to them in after life; the boys, trades, such as carpentering, shoemaking, digging, and delving; the girls, household work, knitting, sewing, and cooking.

Why, I have had servant girls from these schools—girls who, although they could read or write a letter, were perfectly incapable of cooking a beef steak or scouring a floor. I have it from one of the Chaplains of the Westminster Bridewell, that there are not two per cent. of the lads in that prison (some of them sixteen years old) who know anything of a trade.”

The Rev. Russell Carpenter gave some interesting details of the system of education pursued in America.

“There is,” he said, “a Reformatory Establishment at Boston, and a larger one at Westborough, Massachusetts. The late President of the Farm School left 50,000 dollars for its erection, and the State contributed the rest. It is for juvenile delinquents, under the age of sixteen. The Court sentences them for a term of imprisonment, and to the Reform School during their minority. They are sent at once to the school, with the other sentence in abeyance. If they are incorrigible, they are sent back to prison to complete their sentence. If they behave well, the trustees are authorized to apprentice them. The farmer or tradesman who takes them assumes the liability; but if the boy is unmanageable, he is returned to the school, and, if necessary, to prison. I visited the school: it is a large well-arranged building, situated in the midst of a farm of 200 or 300 acres; but most of it is barren or wooded. It had only been built about a year, so that I cannot speak as to its success; at the time of my visit the superintendent was ill, and the chaplain had recently resigned, so that I did not see it to full advantage. It seemed, however, in very good order; no fault could be detected by my unaccustomed eye. The number of inmates was 300. They are divided into four classes according to the degree of reformation. They wear a distinctive, but not a very peculiar or ignominious dress. Part of the day is spent in the school-room, part at work. I did not inspect the farming department—it was winter; but in doors I saw them variously employed. Many were making shoes; others were knitting and garment making; others baking and cooking; others were busy at the wash-tub and ironing; all under the instruction of proper officers—male and female. During the hours of work they are silent, but were allowed to speak to me when I addressed them.”

Mr. A. Thomson then detailed the system at Aberdeen, and added:

“It ought to be made known that all we are desirous of obtaining in the way of aid from Government is, that Parliament should authorize the expenditure of public funds in aid of local exertions—that when an Industrial School has been established in a suitable district, then the local committee should be entitled to look to the public funds for a certain determinate proportion of the expense—but that the whole carrying on and working of the school be left to the unfettered energy of its subscribers and supporters—Government only exercising the right of inspection—as at present in schools partly supported by grants from the Privy Council. This is all the pecuniary aid I

think desirable; and besides this we must obtain, by law, the power of sending juvenile offenders to school instead of to prison."

Scottish benevolence may suffice with such slender state aid, but assuredly English benevolence will not.

The committee met in London, and many conferences they had. They all ended at last in agreeing to wait till Sir John Pakington should move for a committee of inquiry in the House of Commons, which has been again postponed sine die by the ministerial crisis, and Sir John's part therein.

It was a great mistake of the committee to wait for anybody's motion for a committee of inquiry. In the first place, the committee had seen Sir George Grey, who had spoken in a very unministerial tone of hearty encouragement. It is said that he told them himself that a committee of inquiry was a delay; and whether he did or not, we well know it always is. The committee would, perhaps, have done more judiciously to have gone straightforward with their work, waiting on no man; and we trust they will still do so, when the new parliament assembles. Sir John Pakington will not fail to help them. The practical thing is to draw up a bill, or if they think this doing too much, let them draw up the heads of one, and publish it widely, with the reasons for it; convening public meetings in all large towns and getting up petitions in support of it.

We know that some difference of opinion exists about the exact tenor of the scheme to be proposed, but these differences were well nigh if not wholly reconciled, when Sir John Pakington's luckless proposal of a committee suspended the work.

We hope we shall not be deemed officious in suggesting what we think (having carefully read through all that was said at Birmingham) would be the best scheme.

In the first place, the children should be dealt with in two grand classes:—those who have and those who have not fallen under the lash of the law—criminals and non-criminals. The latter being of the ragged, vagabond or dangerous classes, for whom nothing can be better than a large extension of ragged schools, which might so far be made "feeding" as to give dinner out of the produce of the work done, for all these schools should be industrial.

The following Memorial has been drawn up by the committee, requesting fresh aid from the Privy Council Office for these institutions.

Memorial to the Committee of Privy Council on Education in behalf of Ragged Schools or Free Day Schools for the Destitute.

Your lordships' memorialists respectfully beg to represent

that an increasingly large class of schools, called the Ragged Schools or Free Day Schools for the destitute, intended for those children, who, by reason of the vice, neglect, or extreme poverty of their parents, are inadmissible to the existing school establishments recognized by your lordships, do not and cannot receive any fair proportion of the parliamentary grant for public education, under the existing regulations,—yet, that for their maintenance in an effective condition, they require it in a far higher degree.

They cannot at present receive such aid, for the following reasons:—

1. The physical, moral, and intellectual condition of the children requires very peculiar qualifications in the master, which are not always found combined with those mental acquirements required by your lordships in certificated teachers; and not only would it be generally impossible for an excellent ragged school master to go through the examination required, but if he were able to do so, such capability would by no means test his fitness for his peculiar duties, a large proportion of the subjects enjoined being in these schools useless to him, while other qualifications of a very different kind are indispensable. The masters therefore are not aided.
2. The arrangements for pupil teachers and stipendiary monitors, admirable as they may be in the higher schools, are inapplicable in these. Such arrangements are devised for the purpose of training teachers: it would not be desired by your lordships to form the teachers for the next generation from the most degraded children of this; nor would you wish to place young persons from a higher school in association with these. Yet even were it desired to form teachers from this class of society, it would still be impossible in these schools to comply with the existing regulations; the want of early training would render the children unable to pass the examinations, and the condition of the parents would prevent any certainty of their continued attendance.
3. The industrial training, given in Ragged or Free Day Schools, is calculated and intended rather to form habits of industry than to teach a trade; and though its results have been found to be very beneficial in this respect, yet the fluctuating nature of the schools prevents that ostensible progress which is required by your lordships' regulations: this is notwithstanding an important part of the school training.
4. The buildings selected for such schools are necessarily in

poor parts of towns, and such as may happen to be convenient for the locality : however well adapted they may be for the purpose, they will seldom be such as would receive a grant from the committee.

5. The schools themselves must necessarily be in so low an educational condition, as estimated by the mere reading and writing test, that they would hardly be deemed worthy of coming so far under inspection as to receive grants of books and apparatus. Other tests are needed to ascertain the condition of such schools as these.

Ragged Schools and Free Day Schools for the destitute are therefore at present virtually excluded from aid. They do, however, perform, if well conducted, an important work, by acting on a class as yet uninfluenced by the educational movement ; and by so doing, not only benefit the class of children contemplated, but so far from injuring the higher schools, as has been anticipated by some, they have been practically found, when under proper regulations, to confer great benefit on them also ; not only by raising the tone of education, but by removing injurious influences.

But that such schools should effect these important results, they must be good. To make them so, requires more than double the amount of income, from the circumstance of no pence being paid by the children, and from the necessity of a larger staff of teachers, with other appliances not needed in the higher schools. The most strenuous efforts on the part of benevolent persons have hitherto failed to raise a steady income for such schools, or to carry them on as they would desire.

Your memorialists would therefore respectfully, but earnestly, request from your lordships—

1. That masters who give to your inspectors satisfactory proof that they are fitted to carry out the objects of such schools shall receive a larger addition to their income than that now given in the higher schools, in consideration of their not receiving the weekly pence.
2. That monitors articled for two or three years, and undergoing an examination calculated to test their fitness for assisting in these schools, should receive a reasonable payment for their services ; and that a greater number of them should be allowed in each school than in the higher schools. Such steady monitorial aid would be of the highest value in the school, and would secure a good education to the young persons themselves, which will be the means of raising them in society.
3. That the requirements for buildings, industrial training,

and apparatus, should be adapted to the necessary conditions of the schools.

Your memorialists would respectfully appeal to schools in which this experiment has been steadily tried, as testing the statements they have made."

Industry should be made a main feature, and grants for tools, shops and land be specially asked for. With this addition, this memorial seems to us to be excellent, and we trust its prayer will be granted. Of course voluntary effort, so far from being superseded in this department, will be essential to its success. Not so, as regards the other department of criminal children. They will already, by committal or conviction, have become the charge of the state ; and by the state they can alone, we think, be properly or legitimately dealt with. All the people should do is to insist on a sufficient and comprehensive measure. The notion that the country could raise the requisite funds from voluntary subscription is a mere delusion ; which every one knows to be such who knows anything about charities or school subscriptions at all. People who, so informed, still stand up for penal schools supported by voluntary efforts are worse than useless in the cause, for they alone *know* the failure that would attend any such attempt. We do not, however, in the least degree, desire to check the formation of such establishments as the Philanthropic, for example, where a junta of benevolent and opulent men can and will maintain them. We would give them every encouragement and facility, at the same time that we declined committing the tens of thousands of young criminals throughout the kingdom to a chance of being reformed by such casual and necessarily exceptional establishments. We must have a national remedy for a national disease, and nothing short of an establishment, expressly devised and fashioned for the purpose, in every county and division of county, and every large town, will suffice.

The mode of dealing with convicted children and non-convicted differs materially, and from the threshold. The former should be punished for the sake of society, as well as for themselves. We must deter crime in others, and we must especially take care that we do not invite it by making our reformatory schools an acquisition to the destitute. If we once fail to guard against this, we shall have thefts, &c. committed for the sake of going to such schools, all over the country, and infinite mischief would be done. This is no speculative fear ; the thing has been done frequently already, in order to get the board and lodging of ordinary gaols ; much more so that of the reformatory schools, with their pleasant field industry and mild discipline. Besides,

we avow our belief in the necessity of *punishing crime* on its own account, therefore we think the discipline should be at first purely correctional, though tempered with such kindness and admonition as to make the child feel that its own good is intended. Punishment need not be vindictive in order to be correctional and preventive. We think flogging a very bad punishment when it can possibly be avoided, but this cannot always be done. Solitary confinement, hard and monotonous toil, such as turning a crank in a cell, and diet as coarse and low as may consist with health, afford in all ordinary cases sufficient means of punishment. Indeed this would be too severe were it not mitigated by frequent visits from the master and chaplain, and by books to read. Distinctive gaol dresses should be adopted for all the children in the correctional stages, and we incline to think for all other stages also, in order to keep up the deterring effect by means of the badge. If a boy behaved ill after the correctional period, he ought to be returned to it, and the cell discipline; not flogged unless in extraordinary cases.

The general discipline should be mild and gentle, using every possible endeavour to gain the affections of the children, and so obtain an influence over their minds and hearts. After punishment the great aim should be reformation. Industry, especially out of doors in spade husbandry, largely facilitates this, and affords the means of doing it effectually.¹

The schools should entirely supersede gaols for all juvenile offenders. They should never enter the walls of a prison. We know we differ from some zealous friends of the system on this point, but we feel very deeply the importance of keeping the child exempt from either the stigma of having been in gaol, and the contamination of its moral atmosphere and inmates. Let the child have no drawbacks. The present system takes away a chance of his recovery every time it punishes him. Let the new system give him one. The object should be to uncriminalize him.

Power should be given to all magistrates and courts to commit all juvenile offenders, under their present jurisdiction for criminal offences, to penal schools, instead of as now to gaols, whether for their ultimate punishment or their present detention before trial. The terms of detention should be very largely prolonged, in order to give them, the children, the full benefit of the training.

We entirely concur in the principle of making the parents pay for the crime of the child. In nine cases out of ten it is their fault rather than his. The parish may be made liable to the

¹ See plan suggested in "Tactics for the Times as regards the dangerous Classes," p. 120.

county, and the parish have the same means of recovering from the parent as it now has to recover rates, with more summary powers if needed.

The general expenses of the establishments would be borne, first, by the produce of the land and work ; secondly, the payments of parishes and parents ; and thirdly, from the county rates. The first would go probably to defray rent of land and some portion of the food and clothing expenses, which would amount to from two to three shillings per inmate per week ; the second would be so adjusted as to supply the balance ; and the third fund would go to the establishment charges. The incidence of the burden would not thus fall heavily on any particular class, and its incidence moreover would be strictly local, and therefore just. It would fall on the parent, the parish, and the county of the crime. It would give precisely the right persons a strong inducement to prevent crimes.

The parishes especially would have a direct interest in preventing crimes by all kinds of reformatory means, schools, &c., and also by getting rid of tramps, and thus making their present pilgrimages somewhat disagreeable. The parish in which the crime was committed should be primarily liable for the expense of maintaining the culprit, which, as the produce of his labour will go far towards it, and the establishment charges fall on the county, would be very slight, and raise but little parochial opposition.

We are glad to find that a prize of 200*l.* has been offered for the best Essay on the subject by Lady ——. It should be given, we think, to three best Essays, or two at least. Mr. M. D. Hill, Q. C., has the management of it.

It has been suggested to give counties time, say three years, to establish these schools voluntarily, and to do it afterwards compulsorily. We see no good in delay, but on the contrary much harm. We have already a criminal fry growing up which is thoroughly disgraceful to the country, and we believe unparalleled in any other. Surely every day lost is an evil. We are quite rich enough for the due administration of the laws, and probably were never better off since England was England, so that we have not poverty to plead as an excuse. Nevertheless, such is the universal parsimony of all local bodies, that to leave it to them to tax themselves for three years is simply to put it off for three years, no single advantage being gained by this procrastination.

ART. V.—DISTRICT COURTS OF BANKRUPTCY.

THIS is another of Lord Brougham's useful bills. Its objects are—

To restrict the jurisdiction of the Court of Bankruptcy to cases in which the petitioner in any matter of arrangement, or the trader in any matter of bankruptcy, shall have resided or carried on business for six months next immediately preceding the insolvency or bankruptcy within the city of London, or within the counties of Bedford, Berks, Buckingham, Essex, Herts, Kent, Middlesex, Surrey, and Sussex.

To abolish entirely the District Courts of Bankruptcy, and the offices of the commissioners, registrars, and ushers, and to give to the judges of the County Courts jurisdiction in matters of arrangement and of bankruptcy in all cases where the petitioner or trader shall have resided elsewhere than in London and the nine counties aforesaid; affording to such of the commissioners as may be desirous of giving the country the benefit of their experience and services an opportunity of doing so, by becoming judges of the County Courts, and promoting the registrars who may be found to have the requisite qualification.

To appoint a chief commissioner of the Court of Bankruptcy, and further to reduce the number of commissioners, registrars, assignees, &c. acting in London.

To abolish the offices of the treasurers of the County Courts, and to substitute stamp duties in lieu of fees on all proceedings in the County Courts. And

To reduce expenses.

It is obvious that there is here a somewhat strange jumble of different matters, and we think it would have been very much better to have omitted from a bill on so important a subject as the abolition of Bankruptcy Courts and the transfer of their jurisdiction—legislating on the treasurers of County Courts.

The great feature and recommendation of the bill is to bring the jurisdiction nearer to the work. Lord Cottenham truly said—

“If the court were 100 miles off, it was obvious that very great expense must be incurred. When the estate was to be seized by means of a messenger, if the court were in the neighbourhood, it was no expense for the messenger to go and possess himself of it; but if it were situated at any great distance, it was quite obvious that great expense must be incurred by the employment of a messenger for that purpose.” So also as to the

choice of assignees, who are elected by the creditors; if these persons have to travel to a distance, they will either not go at all, or go at great expense and inconvenience. Another step is the proof of the debts, which must be done by the creditors going before the commissioners in person, or making affidavit. That can not be done without great expense if the court is at a distance from the residence of the bankrupt. Again, the realizing of the estate is difficult and expensive if the officers must act at a distance from the authority under which they are commissioned. Then came another proceeding—the division of the estate among the creditors, *5s.* in the pound exceeding the average dividend.

All these things require ramified local courts all over the kingdom. All large towns should clearly have Bankruptcy Courts at their own doors, as Lord Brougham well said. There are now only seven courts holding their sittings in eleven country places. The new bill proposes that there shall be seventy, the old courts merging into an increased number of County Courts. So far there is an obvious gain to the country.

In the bill of last session it was proposed that the commissioners of the Court of Bankruptcy acting in the country, besides being continued commissioners of the court, as in section 5 of the present bill, and consequently retaining their full salaries and their right to retiring annuities, should also *ex officio* be judges of the County Courts, and act therein at such times or places as the Lord Chancellor might think fit to direct. This, however, was objected to on the ground that “having been appointed to an office, and appointed to it for life, it was a hardship, not to say an affront, to have that office extinguished and to be transferred to another and an inferior one;”—and it was said that “the imposition upon them of the duties of judges of the County Courts, in addition to the duties in bankruptcy, was a breach of faith, inasmuch as it was in reference to the latter alone that they had retired from practice and accepted office.” On this account, and because it is at least doubtful whether any amalgamation of these commissioners with the County Court judges would ever work harmoniously, the bill has been altered in this respect; and now simply enacts, that the country commissioners shall be continued commissioners of the Court of Bankruptcy as proposed to be restricted, “leaving it to themselves, if they shall be disposed to do so, to give the country the benefit of their experience and services.”

We devoutly hope they will decline the honour, and that the country will be spared this “benefit.” It is a great mistake to talk of the inferior office of County Court judge. It requires ten times the amount of talent, skill and legal acquirements

required for bankruptcy administration; and, with the utmost deference to the commissioners, we believe some of them are wholly incompetent to sit in the much higher capacity of County Court judge—an office requiring aptitude and acquirements in the whole field of common law and evidence. Let these worthy gentlemen remain where they are—*Ne sutor ultra crepidam*. Many of them are far from juvenile, and will drop off at no very distant period. As they do, their eleven jurisdictions will be transferred one by one to the County Court of the district. This transference of bankruptcy business to the County Courts is perfectly natural. The judges of the latter are already *au fait* in insolvency, and between that and bankruptcy there is little difference.

The appointment of a chief commissioner (section 6), and the power to the Chancellor to appoint a person to act during the illness of a commissioner or registrar (sect. 8), were in Lord Brougham's Bankrupt Law Consolidation Bill, 1849, as it passed the House of Lords—the first being then a new proposal, and the second a re-enactment of section 86 of 5 & 6 Vict. c. 122.

A chief judicial officer is certainly needed, and in no court will the advantage be more felt than in the appointment of a chief commissioner in the Court of Bankruptcy, if he be conversant with the working of the whole system of the court, and with whom the different commissioners and County Court judges may communicate on matters connected with the administrative part of the system. It will be the duty of the chief commissioner to consider the necessary rules for regulating the practice of the court, the duties to be performed by the different officers, the forms of proceedings, and to secure a uniformity in the practice in the Court of Bankruptcy and in the County Courts. These advantages cannot be obtained by the mere imposition of certain additional duties on the senior commissioner. Those matters also which must be done by some one commissioner will be performed more satisfactorily to the public by a chief commissioner; and it is thought good policy, with regard to the efficient discharge of judicial duties, to have a chiefship to which all may naturally aspire.

The 7th section abolishes the offices of clerk of enrolments and registrar of meetings, and the chief registrar is to perform their duties.

During illness, &c., of commissioner or registrar, Lord Chancellor may authorize qualified person to act (s. 8).

Records, proceedings, &c., now in offices of clerk of enrolments and registrar of meetings, are to be transferred to the office of chief registrar, &c. (s. 9).

The proper thing to be done is to consolidate the four offices (chief registrar, secretary of bankrupts, clerk of enrolments, and registrar of meetings), as in article 41 of Lord Brougham's Bankrupt Law Consolidation Bill as it passed the House of Lords, and was sent down to the House of Commons on the 8th of June 1849, and whereby a saving of 3331*l.* a year will be effected, leaving the salary of the chief registrar as it now stands.

Declarations of insolvency are to be filed in the district in which the trader shall reside, &c.

The Lord Chancellor is by this bill to appoint additional judges of County Courts; and such additional judges, and all judges of County Courts appointed subsequent to the passing of this act, are to reside within their respective districts; and no judge of any County Court is to practise as a barrister at law (s. 11). See Fifth Report of Common Law Commissioners.

We are still of opinion that it will be infinitely better to appoint these fifteen new judges as judges of equity courts with bankruptcy jurisdiction. They may very well hold such courts monthly in each county and divisions of counties. It will be a great deal better than giving the County Court judges too much work, and of too many kinds. The principle of a division of labour should be applied to them as to all other crafts, whether of head or hand. This is so obviously expedient, that we do not see why there can be any demur on the subject. The County Court judges doubtlessly may administer bankruptcy matters, but certainly not suits in equity, and it is immaterial whether they try the former or not, except as to distribution of business; but the latter they assuredly cannot administer properly, and practised men should be chosen for the purpose, with higher salaries. In fact the salaries should be in four classes; the lowest 1000*l.* for those least worked; the second 1200*l.* for the next class of work; the third 1400*l.* for the three or four largest districts; and 1600*l.* for the fifteen new equity judges, who should also, as a matter of distribution of labour, have the Bankruptcy Courts, leaving the functions of the present judgeships just as they are. Good judges in each of the lower classes should be always promoted to the higher as they became vacant, if competent. Thus there would be an incentive to improvement and diligence, which is now wholly wanting. We should then no longer witness the scandal of judges lounging into their courts in great coats and hats, and thus attired knocking off the cases after the fashion of skittles. The decorum and judicial dignity with which some of these County Courts are held equals that of any court in the kingdom. The nonchalance,

haste and slovenly carelessness with which others are conducted, is much too bad. During the late assizes it was remarked that in most of the counties where there are good County Court judges, there were the fewest venirees and causes at the assizes, and *vice versâ*.

Without more business there are plenty of county judges already. Their work, however, is most unequally divided. With an increase of work, the distribution we think should be as we have humbly ventured to suggest, notwithstanding that the commissioners of inquiry contemplated the union of the bankruptcy, insolvency, and small debt jurisdictions, with but one court for all. In an elaborate and able paper by Mr. Commissioner Holroyd, he says :—

“ In case of the establishment of local civil courts for the recovery of debts (suggested by many of the witnesses), the duties of judges of such courts might be taken with great advantage to the public by the judges acting in the prosecution of fiats in bankruptcy and in matters of insolvency in the proposed districts; and such courts for the recovery of debts might be very conveniently established in the districts which I propose for matters in bankruptcy and insolvency. The court should be established at the principal place in the respective districts, and be always open for the dispatch of business; and the judges should go periodically, or as many times in the year, and to such places in the different districts, as her majesty, by warrant under her sign manual, or by an order in council, may direct, for discharging the duties imposed upon them as judges of such courts.

“ The judges of the different districts should fix the times of going to the different places as they might find convenient for the public service, subject to the approbation of one of her majesty’s principal secretaries of state. To facilitate the administration of justice in such courts, persons residing in the different places to which the judges would go might be authorized to issue necessary process or summonses, and to receive entries of appearances, and for such other matters as might be found requisite.”

This is all true, and it is scarcely necessary to dwell on the hardship and inconvenience of bringing bankrupts and creditors and witnesses up from Norwich, Yarmouth, Northampton, Salisbury, Southampton, &c. to London; or of these and such places as Leicester, Coventry, Derby, York, Worcester, Chester, Ipswich, Carlisle, Oxford, Shrewsbury, Gloucester, Durham, Lancaster, Stafford, Preston, Huddersfield, Bradford, Wakefield, Lincoln, &c., all of them with judges and court houses of their own, and yet not being able to have their own bankruptcies worked at their own doors. But by no means ought the Bankruptcy and Common Law Courts to be worked by the same judges.

Some such division of labour as we have named seems to be contemplated by Lord Brougham, who has circulated some very able remarks on the bill among the County Court judges, and in which we find it held out that, instead of seven courts holding sittings as now at only eleven places, we shall have *sixty* courts holding sittings at *three hundred and ninety eight* places beyond the proposed limit of the London court. Of these courts, too, it is suggested we should have at least *fifteen* with two judges to each—one of the judges experienced in bankruptcy proceedings and in constant attendance at the largest or most important or most central town in the district, and the other occupied on circuit—"holding" (in the words of Lord Cottenham) "sittings in the most considerable places."

Now, 398 Courts of Bankruptcy are not needed. One-fifth part of the number will be ample. There would not be a fiat a year granted in two-thirds of the 398 courts. It is obvious, moreover, that by making the fifteen new judges merely assistant to the judges in the heaviest districts, the advantages of dividing the labour, and keeping one set of judges to one class of functions, is lost sight of.

It is presumed that from among the commissioners and registrars fifteen judges may be obtained; but taking into consideration the proposal of appointing the judges of the County Courts to be officers of the Court of Chancery, and the additional duties likely to arise from this, and also the duties proposed to be cast upon them by the Charitable Trusts Bill, and the probability of some further jurisdiction being given to them, it is worthy of consideration whether the Chancellor ought not also to have power to appoint such further number as he may deem requisite, especially as in some of the circuits two judges will be probably requisite ere long.

It is further provided by the bill,—

That the judges are to sit at such times as the Lord Chancellor shall think fit to direct, or as may be ordered by any general rule or order to be made in pursuance of the act (s. 12).

That clerks of County Courts are to have the same power as is given to the registrars of the Court of Bankruptcy by the Bankrupt Law Consolidation Act, 1849, to keep docket book, make returns, and tax costs, &c. (s. 13).

That a record is to be kept in London of all petitions of insolvent debtors presented to the County Courts (s. 14).

That as vacancies occur, the official assignees in London are to be reduced to six in number; and that the official assignees in the country are to be transferred to the County Courts (s. 15).

That the messengers acting in London are to be reduced in

number, and messengers in district courts to be transferred to County Courts, &c. (s. 16).

That offices of certain ushers to be abolished (s. 17).

That petitions for arrangement under 7 & 8 Vict. c. 70, are to bear the same stamp duty as petitions in bankruptcy; and petitions in arrangement and in bankruptcy, &c. in County Courts under this act to be written or printed, and stamped, as directed by 12 & 13 Vict. c. 106, s. 48 (s. 18).

That the offices of treasurers of County Courts be abolished; and documents mentioned in schedule to this act to be written or printed on stamped vellum, &c. in lieu of fees; compensation to treasurers (s. 19.)

That the inland revenue commissioners are to give the necessary directions with respect to stamp duties; also to keep accounts thereof, and to pay over monies received (s. 20).

That the inland revenue commissioners may appoint persons for sale or distribution of stamps, and make allowance for spoiled stamps, &c. (s. 21).

These last regulations are out of place in a bankruptcy bill, but are nevertheless very expedient.

To abolish the offices of the treasurers of the County Courts, and, as in bankruptcy, to substitute stamp duties in lieu of fees, is also advisable. The collection of these fees, and the keeping accounts of them, and making returns, &c., must occupy much time and many clerks, with some attendant temptation and risk. The stamp system saves this, and also the salaries of the treasurers, after the decease of the existing officers.

It is also provided, that the Lord Chancellor may direct the accountant in bankruptcy to purchase compensations and annuities from persons entitled thereto, or in their names, and in lieu thereof to purchase annuities from national debt commissioners, and substitute the same for compensations, (s. 27); and if securities are at any time insufficient to answer the demands of any bankrupt or his creditors, &c., the sum taken for the purposes of the act is to be made good by parliament (s. 28).

Two commissioners of the Court of Bankruptcy, and three judges of County Courts (with approval of Lord Chancellor), are empowered to make rules and orders (s. 29).

It is proposed that the act shall take effect on the 11th of October next.

We confess on the whole that we wish it success. We believe it will be serviceable to the ends of justice and the public convenience even if passed as it now stands. The saving of time and expense to those who are engaged or concerned in bankruptcy business cannot fail to be exceedingly great.

The saving effected by the measure is said to be great also, and amounting to 67,370*l.* per annum, independent of the saving which must arise from the purchase of compensations and annuities under sect. 27. This may appear startling, (say the "remarks,") but so it is; and here are the different items, amounting altogether to a sum more than sufficient to cover an addition of 500*l.* to the salaries of the sixty judges of the County Courts, and to provide for twenty additional judges:—

	£
Three London commissioners, 2000 <i>l.</i> each . . .	6,000
One registrar (office held by Mr. Ayton prior to his promotion)	1,200
Three London registrars, 1000 <i>l.</i> each	3,000
Twelve country commissioners, 1800 <i>l.</i> each . . .	21,600
Twelve country registrars, 800 <i>l.</i> each	9,600
Secretary of bankrupts	1,200
Fees of secretary of bankrupts	600
Clerk of enrolments	500
Registrar of meetings and clerks	531
Officers of Court of Review	330
Clerks in different departments	1,500
Ushers	1,260
Rent and expenses of Country Courts	3,000
Travelling expenses of country commissioners, registrars and ushers	2,000
Messenger and housekeeper, Quality Court . . .	49
Treasurers of County Courts, clerks, and travelling expenses	15,000

We esteem this saving very cheaply. The great object is to make the administration of justice prompt, easy and *cheap*—to the *people*—not to the state. That is of very secondary importance. We think the bill on the whole, however, well calculated to further its higher objects, and approve of it accordingly.

ART. VI.—VENDORS AND PURCHASERS OF REAL ESTATE.

A Compendium of the Law and Practice of Vendors and Purchasers of Real Estate. By T. Henry Dart, Esq., M.A., Barrister-at-Law. Second Edition. Stevens and Norton. London, 1852.

WHETHER a general registry of titles be adopted or not, a work on this subject will, for many years to come, be most useful to the profession, during which the present system would certainly survive the change. We have long wanted a concise treatise on this subject. This is not a mere abstract, and still less a string of incongruous marginal notes, but a really well digested, well methodised, and clearly written exposition of the law as it now actually and practically is, with sufficient reference to cases, both to illustrate and authenticate the law, without encumbering it with redundant authorities. This task Mr. Dart seemed to us to have admirably performed in his first edition, and so unquestionably thought the profession, or we should not have had another edition so soon afterwards. The arrangement follows the order in which the different incidents occur. First, the cases are treated of where the contract takes the ordinary course without litigation. Next, those are discussed in which the various kinds of conflict arise.

The author has been very happy in his selection of topics, and has chosen those most likely to be useful to each class of practitioners. He omits about two-thirds of what other books contain, and probably nobody will feel the omission to be anything but an advantage. The contents will show the nature of the work.

First, Mr. Dart treats of the restrictions on the general capacity to buy or sell real estate; next, as to sales by fiduciary vendors; as to the duties of vendors and purchasers prior to sale; as to the particulars and conditions of sale; the sale itself; the agreement; the effect of the contract on the rights of the parties; the abstract; the production and examination of deeds; matters arising between delivery of abstract and preparation of conveyance; searches for incumbrances; preparation of conveyance; matters relating to completion of purchase; effects of conveyance on relative rights of vendor and purchaser; effect of, on adverse rights of third parties; on rights of joint purchasers and persons other than the nominal purchasers; remedies at law for breach of contract; as to specific performance; sales by Court of Chancery, which concludes the book.

Let us see how Mr. Dart treats the subject of the inquiries as

to incumbrances, as a specimen of his style and method of handling his subject. He recommends that inquiries, specifying any apprehended incumbrance, should be made of the vendor's solicitor. The object being, not only to obtain information, but, in the event of an irremovable incumbrance, to justify charging for the preparation of the conveyance, the parties being bound by their replies. *Ibbotson v. Rhodes*, 2 Vern. 554.

On one point we cannot concur in Mr. Dart's view. He says, speaking of the duties of an incumbrancer, that he "need not *voluntarily* communicate the existence of his claim to a person whom he knows to be about purchasing the estate. This, however, it is conceived, only holds good in cases where there is no reason to suppose that the vendor is about to commit the fraud of selling the estate as unincumbered. If, with knowledge of such a fraud being in progress, the incumbrancer were to conceal his claim, equity, it appears, would interfere to prevent his setting up his right against the purchaser."

Only in case he were *particeps criminis*. Mr. Dart puts it as though the mere fact of the fraud on the part of the vendor would, with the knowledge of the incumbrancer, defeat his claim. This is extremely doubtful, and Mr. Dart seems to think so afterwards, where he admits that "slight additional grounds" would be requisite in order "to treat such incumbrancer as an accomplice of the vendor." Were it not so, every mortgagee would be bound to ascertain that the mortgagor revealed the mortgage to every purchaser.

Trustees who deny the existence of incumbrances, of which they have had notice, are held liable only where they assert the absolute right of the vendor to sell. They should refrain from doing more than affirming their belief that they have not had notice.

Searches for judgments are the most important for the purchaser's solicitor to make. After citing and stating the operation of the law *before* the 1 & 2 Vict. c. 110, *since*, and after 2 & 3 Vict. c. 11, and 3 & 4 Vict. c. 82, Mr. Dart arrives at these conclusions, which we give in abstract. That, as respects legal terms for years and equitable estates generally, the judgment is binding from the time it is *entered up*. That the creditor acquires no remedy at law against equitable estates, except in cases of simple trusts in favour of the debtor; but that land held simply in trust for the debtor at the date of the judgment can be taken in execution, notwithstanding intermediate alienation. That a registered judgment operates as a charge on all lands, &c. to which the person shall, at the entering up of such judgment, be possessed, except as against purchasers or mortgagees without

notice, or purchasers, &c. who became such before 1st October, 1838. That, in case of bankruptcy, the judgment creditor has under 13th sect. of 1 & 2 Vict. c. 110, all the rights of an equitable mortgagee, if the judgment were entered up twelve months before the issuing of the fiat. Mr. Dart goes into the proofs that a judgment creditor is postponed to a cestui que trust, or a prior equitable incumbrancer, and relies on *Whitworth v. Gaugain*, 1 Phill. 728, in support of his opinion.

An annuity given by a will, and charged on or issuing out of land, is an interest in land within the statute, so that a search for judgments against such an annuitant will be necessary, if his annuity is to be released or dealt with. The same rule, Mr. Dart thinks, holds with a legacy charged on land.

"A judgment," he adds, "entered up against the vendor after a contract for sale, is, as formerly, an equitable charge upon the unpaid purchase money, although execution cannot be levied upon it; and so upon a sale by a mortgagee, the surplus proceeds of sale are charged by judgments entered up against the mortgagor subsequently to the mortgage."

After detailing how the remedies under the statutes of Victoria depend on registration, Mr. Dart says, "in no case need a search at Westminster extend back for more than five years, but the search for the five years preceding the purchase should be made, not only as against the present vendor, but also against former owners, although more than five years may have elapsed since they parted with the property. It may be here observed, that where a judgment is registered after the expiration of more than five years from the date of the last registration, there seems to be nothing in the act to affect its validity, except as against purchasers or mortgagees claiming under an instrument executed between the expiration of such period of five years and the subsequent registration."

No provision was made in the acts of Victoria for the fresh registration of judgments, &c. in the Palatine Courts of Lancaster and Durham; it is therefore, as Mr. Dart says, necessary there to extend the search as far as was formerly requisite; and as lands in a county palatine may be extended on a judgment obtained in one of the courts of Westminster, search should likewise be made there. A purchaser, with notice of unregistered judgments, is protected from the additional remedies of the judgment creditor under the 1 & 2 Vict. c. 110. It is, however, doubted by Mr. Dart whether such purchaser is not still bound in equity to the same extent as he would have been bound under the old law by notice of an undocketed judgment.

Mr. Dart certainly multiplies the necessity of searches to the

utmost limits. He recommends it for all but copyholds, at the Common Pleas, as against debts due to the crown, not limited to five years; also at the register at Westminster for *lis pendens*; at the Court of Rolls for copyhold property; in some cases in the local registers of Middlesex, Yorkshire, &c. &c. In many cases he advises the search to be extended to the Bankruptcy and Insolvency Courts, and he borrows from Lord St. Leonards the advice to search for annuities, though Mr. Jarman favours the contrary practice. Where the estate has been entailed, or has belonged to married women, search is also to be made for inrolled deeds and acknowledgments under the 3 & 4 Will. 4, c. 74. But one time, however, for search is recommended, and that immediately before completion of purchase. "*Cavendo tutus*" is certainly Mr. Dart's motto, and it renders his book doubly valuable. We commend it heartily. It is carefully compiled, well arranged, and remarkably accurate.

ART. VII.—OUR LAWS OF PROGRESS.

IMPERIAL Rome was founded by a lucky association of rogues and vagabonds: and the conflagration of an ancient city produced a happy fusion of metals which was in high estimation, and was appropriately designated "*Corinthian brass*." These instances may serve to show, that the greatest strength and value may derive their origin merely from a combination of heterogeneous and most inadequate elements: and thus a morbid fancy might be led to imagine, that a certain great institution of our country owes its acknowledged power and inestimable price to a somewhat analogous cause. Nor would the theory be altogether baseless; for into that vast crucible, the British Bar, has been flung with a wanton and a lavish hand, without stint and without proportion, all that is most precious and most worthless: the golden ingots of truth and honour simmer side by side with the sordid sweepings of the office or the press; the classic vase, enriched with the bright achievements of poetry, philosophy and knowledge, the wit that sparkles with a diamond's edge, and the perfect temper of elastic reason, are doomed to mingle indiscriminately with the tortuous wires of many a cunning snare, with the leaden dulness of ignorance and envy, the common traps of repartee, and the dazzling blade

of sophistry that breaks short at the first encounter. A wondrous compound! seething in perpetual hostility and competition, and forming that peculiar forensic metal with which, we fear, the better ingredients coalesce in small proportion.

Such, in truth, to dismiss the language of metaphor, is the aspect of the Bar at this moment. In no profession are there seen so many varieties of mental, moral, and physical idiosyncrasy. Take the leaders one by one, examine them carefully, and the more you examine and compare, the greater diversities you discover. Here you have a very Percy, the mirror of forensic chivalry—lawyer, orator and statesman, above all the faithful guardian of honour. How many competitors has he distanced! and now at the close of his career, by whom is he challenged? By one who has faith in nothing but his own personal progress, and who, declining open warfare, relies upon the entangling snares of circumvention, and maintains a contest like that of the retiarius with the mirmillo. Here is a burly declaimer of tragic aspect and portentous voice, who snaps up a witness whole, and bolts him with a growl; yet he is often overthrown by a little unpretending rival, his very antithesis in face, figure, voice and mind. In short, that compendious suitor, the public, like the corresponding character in private life, is extremely fickle and fond of variety.

It is moreover curious to observe that no previous study or occupation can be named that either qualifies or disqualifies a man for this profession; nor can a single antecedent be relied on to justify the faintest prediction of success or failure. Draughts from all orders and degrees of men, except the ecclesiastical, fill up its ranks. Men who have served their country in the army and navy, have resigned the sword for the gown, and have won, upon a bloodless field, another and not a less glorious laurel: the merchant or tradesman, the actor, the pedagogue, the author, have all aired their ambition within that spacious field, as freely as the faithful student of Cicero and Quintilian, or the ready and tenacious reasoner, who is skilled in dialectic fence, or has wrestled with the athletes of Euclid's hardy school. Of this motley band of recruits, the latter alone have any right to look for preferment, for undoubtedly some of the older judges, particularly in the Court of Exchequer, may fairly vindicate that honour to the University of Cambridge. But as to the rest, which shall pine in the "cold shade," unsunned by hope, which shall flourish in the noontide of success, who can venture to predict? When that hard-featured soldier who fought at Waterloo, the good looking officer in the Grenadier Guards, the lithe midshipman who served at Copenhagen, the smart subaltern in the 45th,

stripped off their uniforms and put on the gown, were the senior wranglers and double first class men in the least affected? And yet such men have become leaders of their circuits, filled the office of attorney-general, or presided over the Court of Common Pleas. While many a wrangler and profound thinker has beheld, in hopeless amazement, how the rich vein has been disclosed beneath a neglected and most unlikely soil,—while the mine of seeming promise remains unnoticed and unworked;—"wooden spoons" become suddenly transmuted into a nobler metal, and are promoted to a higher service; taciturnity finds a voice, while the eloquence that charmed the birth-day circle, or enthralled "the Union," is dumb indeed.

In short, the call to the Bar effects as great a change as the transmogrification in a pantomime, and the familiar beings of our early acquaintance spring into characters the most extraordinary and the most unlikely. It is a painful truth, however, that no profession has so ruthlessly disappointed its votaries, and that truth is bitterly felt at the present crisis. It is painful, indeed, to contemplate the courts of law, where venerable juniors sit moulting on the back-rows, birdlimed by a cruel fate; many and many a time have they reminded us of the cripples at the pool of Bethesda. And yet they have all had their chances: briefs have been driven in to them from all quarters, like pheasants to a battue; if they are not within ten Levitical degrees of an attorney, they are the inheritors of a county name, and by constant canvassing have had their clients at some time or other; we ought more properly to say their constituents, through whose suffrages their territorial talents have represented particular districts.

Whence, then, the failure? We cannot help thinking that they have wanted that "word in season," which, in default of lectures and mootings, is so invaluable. It is, therefore, with a deep sense of our duty to our learned friends, that we offer them a few words of advice, after the manner of a great author, whose "directions to servants" we have ventured to imitate. If we succeed in teaching only one of our brethren his professional code, we shall not have laboured in vain. If success attend our efforts, we may, perhaps, on some future occasion, extend our interest to the other branch of the profession, and to the various subordinates of our great society.

Rules that concern all Barristers in general.

When your patron, the attorney, wants you to go to a place, never be able to go, at first, or he will not appreciate you: at last, when he begins to think seriously of taking the brief away,

throw up your "previous engagements" and undertake it, and the attorney will appreciate the sacrifice.

When you have advised wrong, drawn a demurrable plea, or lost a verdict, be highly indignant, and throw the whole blame on your instructions. If that fails, sit in error on the court which decided against you; you will easily convince the attorney you are right: and then advise him "to bring his writ of error, and, if necessary, take the matter up to the House of Lords:" this will immediately put him on his mettle, and make him think you a profound lawyer.

If you see your attorney give a brief to any of your learned brethren, be sure to decry him judiciously, for fear of losing your reputation: and there is no exception in case of a favourite leader, or one who is of the attorney's family—upon whom you are bound in prudence to lay as many faults as you can, that you may always be retained with him, "to keep him right."

The equity man, the common law man, the criminal lawyer, the pleader, indeed every one concerned in the profession, should advise as if the attorney's whole business should be conducted through his particular branch. For instance, if the equity man hears the attorney mention an action for the infringement of a patent, let him of course point out how much better the whole matter might be disposed of by a "bill." So the criminal lawyer would advise an indictment instead of an action on the case; and thus each branch of the profession will flourish to its own particular advantage, without caring for the interests of the client.

When you are rebuked by a judge (which, with submission to the bench, is an unmannerly practice,) it often happens, especially in the criminal courts, that some stranger from the gallery will compliment you upon your pluck: in such a case, you will have a good title to justify yourself, and may rightly conclude that whenever he chides you afterwards, on other occasions, he will be in the wrong; in which opinion you will be the better confirmed, by stating your case to your learned brethren in the robing-room, who will certainly decide in your favour: therefore, as I have said before, whenever you are rebuked, complain as if you were injured.

It often happens that a barrister retained with a heavy fee is apt to be away when the case is called on; perhaps he has cases in two, three, or even four courts at once: for the temptation of the fee, to be sure, is great, and flesh and blood cannot always resist. When you come in after the verdict has gone against you, the client storms—the attorney remonstrates. "The last brief I ever give him"—"Take the money and not do the

work"—is the kind of language you hear. But here you ought to be provided with a set of excuses, necessary to show your great importance; for instance—a deputation came all the way from the country this morning to ask you to stand for a borough, and must take back your decision to-morrow: a learned friend that showed cause against your rule could not argue it on any other day: you had to preside in the hall of your inn, at an entertainment given to an old circuit friend who had taken the coif: the leader of your party sent the subject of an article for you to write, and you could not get a "devil" to do it till just that moment: you had to prepare a memorial to the Home Secretary for that celebrated criminal whom you defended "specially," and who is to be hanged next Saturday: you stumbled upon "quite a new point," and were forced to stay three hours in chambers before you could settle it: some ribald attack was made upon you by a newspaper, and you were ashamed to appear in public till you had written a letter which should entirely clear you: you were pressed by the Lord Chancellor to go and breakfast with him, when he would not let you go for three hours, and you had the greatest difficulty in getting away: you had to make a short motion before the Vice-Chancellor, which turned out a long one, and kept you the whole morning at Lincoln's Inn: you were told the case was certain to go off, or to break down, and that the briefs were so indorsed on the other side; that was the result of several inquiries that your clerk had made at the bar.

Consult the attorney's interest in all cases against that of the client; and when you have to advise, never propose a compromise, but at once recommend recourse to an action. This is greatly to the attorney's advantage, and will multiply costs for him and fees for yourself: and remember that money can never be better spent than in procuring the exercise of intellectual power.

Never give an atom of advice beyond the point to which you are specifically directed. For example, if a point of equity or criminal law arises, the answer is ready—The remedy at law is plain, but as for the equity, perhaps the opinion of a gentleman in that branch of the profession had better be taken: if an application to a magistrate would provide a remedy, and you are requested to attend a police court, you may say you don't usually attend to that kind of business, but you are bound of course to go in "specially."

Attornies and clients will frequently find fault with the barrister, for not cross-examining enough; but neither attornies nor clients consider that those witnesses will be re-examined, after

they have been cross-examined, and that the other side has thereby a double advantage ; and that frequently the best and most effective way is not to cross-examine at all. But if you are so pestered, that you cannot very well help it, then give the witness such an examination as will shake your whole case, and upset every thing, to let your client and the attorney admire the superior wisdom of your tactics.

If you are a special pleader, and find yourself growing into favour with the attornies or their clerks, take the same opportunity of hinting in a very mild way, that you think of going to the bar ; and when they ask the reason, and express regret at losing you, answer that you had rather be a pleader than anything else, but a man must at some time or other take this step ; that pleading, even at the best, produces but a moderate income, that it involves very hard labour, and that the fees are very small. Upon which, if your clients have any generosity, they will allow you to mark your fees a little higher, rather than lose you : but if you find that this course does not answer, and you have no mind to be called, get your clerk to give it out that several large firms have prevailed upon you to stay.

Whatever good jokes you can pilfer from the papers, save them to fire off again upon your learned friends in court ; and don't spare the leaders, provided they are in a bad humour.

Have your name written up in the largest Roman capitals at the staircase where your chambers are, and on the removal boards, to jog the memory of the public.

If you are a good-looking fellow, whenever you have a female witness to examine, go as close to her as possible ; and if your manner be forward, you may look at her with a smile, and address her by the Christian name : this I have known to have had a very good effect with some juries.

Never come to attend to a case, till you have been sent for two or three times, for none but the briefless are ever on the spot to attend to their business : and when the client has retained counsel, he ought to know that there is no implied contract, and that he is not bound to come at all.

When you have devilled all your ordinary briefs (which may be done in ten minutes), the responsible ones may be done in the same way ; for a devil will draw pleas, make speeches, write an opinion, or in case of necessity, argue a demurrer ; therefore apply him indifferently to all these uses, but don't let him gain too much experience, and become too bright, or he may be depriving you of "tin."

Although you will of course invite your learned friends to

dinner, yet you ought to do this sparingly, and more constantly to invite the attorneys.

Let it be a constant rule, that no "opinion," observation, or speech, in chambers or in court, should contain above three perfect sentences, which has been the ancient and constant practice among all the lawyers I ever knew, and it is said to be founded upon two reasons: first, to show that barristers are ever in profound meditation; secondly, it was thought a point of distinction that lawyers' "opinions" and speeches should not be governed by the same rules as those of ordinary people. I grant there has been an exception to this rule, with regard to the serjeant, who, by old custom, was allowed to be unusually prosy and soporific. And yet I have seldom heard one of them deliver more than three perfect sentences. Now this general mutilation of the Queen's English is, by philosophers, imputed to two causes, which certainly have great effect upon most occasions; I mean abusing and complimenting. The proprieties of language are seldom observed in the former instance, whatever be the difference between learned gentlemen: and in the latter, especially after dinner, there is generally so much rigmarole, that not even the serjeant, who is usually dull and heavy, can always round his periods with success.

I never could endure to see barristers so regardless of their own interests, as not to walk the streets, when on circuit, in their wigs and gowns; it is a foolish excuse to allege that their robes will become dirty, when it is notorious that they must wear them in the purlieus of the court, where there is of necessity a much greater degree of dirt.

When you go out to collect the opinions of all your learned friends on circuit, concerning the one point in your single brief, leave your clerk to attend to the door, otherwise an attorney may call in your absence, and the opportunity of securing him be lost.

I do most earnestly exhort you all to unanimity and concord: but mistake me not: you may quarrel with each other in court as much as you please, only always bear in mind that you have a common enemy, the Public, and you have a common cause to defend—your interest. Believe an old practitioner: whoever, from a sense of duty, exposes the abuses of the profession, shall be ruined by a general confederacy against him.

The general place of deliberation for all barristers, especially on circuit, is the bar mess—it is there, after dinner, amid the interchange of joke and anecdote, the jocund laugh, and the circling wine, that the grand affairs of the profession ought to be consulted: whether they concern your honour or interest,

rules of decorum, or rules of practice, your conduct to the attornies or the public : there, as in your proper element, you can laugh, riot and vote, in full security.

If a barrister happens to be ill, and cannot appear, you must all join in telling the attorney, that his health is getting very precarious ; upon which the client, if he happens to be good-natured, will order his clerk to indorse his remaining briefs with the names of some of you.

When the barrister and his clerk are away from chambers at the same time, at Westminster or elsewhere, care must be taken to leave the laundress behind, unless you happen to have a tenant who will answer at the door, and attend to the clients, if any call. Which is to stay in chambers, is to be decided by the chances of your respective business ; as by staying in chambers judiciously, you have the opportunity of hugging each other's clients, without danger of being caught together. These opportunities must never be missed, because they come but sometimes ; and all is safe enough, while there is nobody else in the way.

When an attorney happens to call upon a barrister who is out, the clerk must answer that you had but just that minute stepped out, being obliged to attend a consultation with the Attorney-General.

If a judge orders you to be sent for when your case is on, and you happen to come just as he is summing up, you need not hurry yourself, and if you be remonstrated with for the delay, you may lawfully say, you came no sooner because you did not know that your case was on.

When your eloquence is summarily disposed of in the summing up, keep as near the jury as you can, and as you leave the court, mutter loud enough to be plainly heard against the monstrous partiality of his lordship ; this will make people believe that you are in the right.

Whoever comes to retain you when you have advised on the other side, never burden your memory with the circumstance, for indeed you have too many other things to remember. Besides it is your clerk's affair, and the attorney's fault that he did not ask him ; and who can remember cases ? No wonder you made the mistake, you have so many opinions to write and briefs to read.

If it be possible, never mis-quote an authority to a learned judge, unless you have some reason to believe that he will not find it out till the case is over. When the book is produced, all the deception is exposed which the judge never dreamt of, and your learned friend on the other side will make it the scape-

goat of all his mismanagement. And when he is asked how it happened that he was not acquainted with the case, he will carelessly begin untying his largest brief, and mention to the attorney that in the multiplicity of his business, &c., and that he really never suspected his learned friend of such a proceeding. Where there are knowing juniors in court, they are usually great impediments to such misrepresentations ; the only remedy is to bribe them with briefs to devil, that they may not put the court in possession of the truth.

I advise those clerks, whose masters have business on circuit, and who are on the look out for the halfcrowns, always to be at the elbow of an attorney when he comes into court, so that he must of necessity bow to you ; and he must have more independence and fewer briefs than usual, if any of you let him escape ; and according as you behave yourselves, he will remember to treat you another time.

If you send to an attorney for fees, and you happen at the time to be hard up, take half the money, and let the attorney pocket the difference on his own account. This is not to the credit of either you or him, but he may give you more business as a compensation.

When an attorney sends for you out of the robing room to give you a brief, be sure not to stand at the door, but shut it at once and walk him off to some private corner, where you can hold him by the button-hole, and impress him with your intense appreciation of the merits of the case.

If a judge happens once in his life to misrepresent you, you are a lucky fellow ; you may say what you will in future, and when the judge fixes you with it, get up and deny it, and recollecting his former error he may possibly think himself equally mistaken in the present case.

When an attorney begins to leave you, and to give his briefs to some one else, the best way is to grow extremely amiable to him personally, but to damage his cases to the utmost of your power when you happen to be opposed to him, till he finds it necessary to come back to you ; and when he has come back, to secure him, give him such an opinion of the manner in which your rival mismanaged his cases, that he will never venture to employ him again.

Some nervous clients who are afraid of missing a point, having observed that men in large practice often omit to note up their briefs, or take down the evidence, have contrived a system of underlining, with marks of admiration and marginal comments, so arranged as thoroughly to display the point, and require great strength of mind to avoid seeing it, which is an immense

embarrassment to the counsel, whose business it is to ascertain all this for himself; but ingenuity may do much, for the old practitioners have found out an effectual remedy against this grievance, by underlining the brief in such a manner that the original shall have no effect; however, as to my own part, I would rather choose not to read the brief at all, but to attend to the weight of evidence as it comes out in court.

The witnesses you have to cross-examine must occasionally be broken down, although some of them have spoken the truth. But you may find out many expedients; you may shake your fist at them, or batter the table with it, explode them with an indignant burst, or an old joke, or a dilemma, or an indictment for perjury, make them contradict themselves, hint that they have been drinking, not coffee, but spirits, beer, at least something else than tea, have they ever been fined (they must not get angry), or suspected, or transported, or hanged? or you may cut a joke upon their personal appearance, and wink at the jury.

When you have pupils who pay you the hundred guineas, don't teach them the proper way of conducting business in court, or pursuing the study of their profession, which they may learn for themselves to much greater advantage; you must take care not to let them disturb you when you have nothing to do.

Attribute the losing of every verdict to a witness, a jurymen, the judge, or your instructions, or to the client, who would insist upon calling witnesses; by this rule you will excuse yourself, do no hurt to anybody else, and save the attorney and his clerk from the remonstrances of the suitor.

When you are without the legitimate means of bringing yourself before the public in court, use all expedients you can invent rather than remain altogether without notice. For instance, if the window be shut, ask to have it opened; if open, request that it be shut. If the window be too far off, complain of the door, the crowded state of the passages, interpret the witness, call out "usher," or beckon your clerk. If you happen to have a paper, hand it to the first vacant attorney you may see. Wear high-heeled boots if you are rather short, and take care to have them of patent leather. Wear a powdered wig as large as possible. If the queen's counsel wants to be noticed, let him appear after the levée in his court suit.

There are several ways of putting out a judge, and you ought to be instructed in them all; you may take a point when there is nothing in it, which will put his lordship out immediately; you may disregard his suggestions and treat him with contempt; or pervert the evidence till it assumes quite another

aspect, or omit it altogether; when you sit down, after you have made your speech, you may dip your pen into the ink-stand, and begin to take a vicious note of the summing up. The serjeant may confuse the judge with a mass of cases, or the criminal lawyer with a friendly suggestion, a doubtful precedent, or an authority from Carrington & Payne; the sessions man may put out the chairman by taking a point with something in it, against his opinion, which no judgment was ever known to alter; but the quickest and best of all methods is to ask him to reserve a case, which will make his mind quite clear, and he will sum up for a conviction.

There is nothing so pernicious on a circuit as an eloquent man; against whom it must be the principal business of you all to unite. Whatever case he is in, take all opportunities to spoil the business he is about, and to cross him in everything. For instance, if the queen's counsel be an eloquent man, ruffle his temper whenever you have an opportunity, or allude to him as a Cicero or Demosthenes. Never remind him of a name or a date which he may happen to have forgotten. If it be the serjeant, whenever he addresses the jury, begin to cough or to whisper aloud, or get up and disturb their attention; or when he speaks better than usual, interrupt him, or cut a joke on him. If an utter barrister be suspected, let the serjeant allude to his youth and over zeal; or when he is going on with his speech, let him keep up a running commentary with whispers, and continue it all the way till he comes to the peroration, and then let the junior blow his nose so as to make him inaudible. The sessions man is very likely to be guilty of this fault, in hopes to obtain business; in this case his opponent must be sure to mislead him in his opening, or to open but half the case, and when he complains, tell all the court that when your learned friend has a little more experience, he will learn the importance of doing in one hour what he now seems disposed to prolong over a week.

CHAP. I.—*Directions to the Queen's Counsel.*

In my directions to barristers, I find, from my long observation, that you queen's counsel are the principal persons concerned.

Your business being of the greatest variety, and requiring the greatest exactness, I shall, as well as I can recollect, run through the several branches of your office, and order my instructions accordingly.

In waiting to move in banco, take all possible care to save your own trouble, and disregard your client's interest. Therefore, since those who dine at the same mess are supposed to be friends, you can all arrange your cases without regard to that,

which will save you much pains, as well as the hazard of interfering with each other. Give no papers out at chambers until they have been called for thrice at least, by which some clients will give you a heavier fee, and your reputation for a large practice be secured.

If any one desires to retain you, first look at your retainer book to see whether you are on the other side; then examine it to see what court it is in, that you may not be mistaken; and lastly, say that your clerk will enter it, to show your independence.

Be more careful to have the brief you want at the bottom of the bag than the top; and if the brief be very thick, and well underlined, the attorneys will esteem you the more.

If a rather nervous man, of high integrity, great learning, or modesty, happen to be opposed to you, whom you find to be snubbed equally by the chief and the puisnés (which nobody is readier to discover and observe than we who practise at the bar), it must be the business of you and your junior to follow the example of your betters, by treating him much more contemptuously than they do; and you cannot please the bench more, nor of course the attorney.

If any one leaves a case for you to advise upon when the circuit has begun, do not give yourself the pains of looking into the authorities, but collect the opinions and obiter dicta of all your friends, of whatever standing or ability; but do not let the attorney know it, or he will assuredly remember it. On the contrary, if any one leaves a parliamentary brief when the circuit has begun, come up to town, make the greatest possible display of your abilities, by which you will succeed in obtaining all the attorney's remaining business, without the sin of poaching upon your learned friends.

There is likewise a method, full as honest, by which you have a chance of making every term the best part of a fifty pound note for nothing, for you are to suppose that the suitors do not care about that trifling matter called a reference; therefore always propose a reference to them when all the expense of coming to trial has been incurred, although the plaintiff's counsel has not uttered three words.

Take special care that your cases have not been overruled when you quote them; in order to which, let your clerk note up all the contemporary reports of the same decision, and you will be sure to find one that will support you.

If you are taken down specially upon any important case, and you find it will last, don't be at the trouble of opening your case, but give a quiet hint to the leader on the other side, and you will find him immediately fall into your views; or begin to

open it as a case involving very dry matters of detail, and you will soon have to sit down, as the judge will effectually recommend a compromise.

If you are ambitious of being in appeals before the House of Lords, quote as many cases from *Clarke & Finnelly* as you can; but then take care to add a proper number of judgments in the inferior courts, that you may not be eclipsed by your junior in quoting the apposite decisions.

There is an excellent invention found out of late years in the reading of affidavits in banco; for instance, a learned gentleman produces an affidavit and reads but half; another reads but a small portion; you immediately read the remainder in your own way, and add a small sentence of your deponent, and so backwards and forwards as long as the argument lasts, by which you answer three ends. First, you save yourself the trouble of stating the fact, and consequently the danger of injuring your case; secondly, you are sure not to be mistaken in giving the bench the information they call for; and lastly, by this method you are certain that a good deal is lost.

Because some clerks are apt to forget to bring their master's bags into court at the right time, be sure you remember to have yours brought in shortly after all the rest, and place it in the most conspicuous part of the table, to let people see what a large practice you have.

Some counsel have a habit of attending (as they call it) one court, by which they lose a great deal of business; let your method be to take all briefs indiscriminately, which will make your practice appear double. By this means you will be sure not to lose a single client, and the state of the fee book will compensate for the client's reproaches.

Open a case for the plaintiff, commence your argument, and defend a murder with the same stock observations that have been used for centuries; for it will be new to the client in each case, and will save you the trouble of taxing your invention; and in reward of such good husbandry, my judgment is that you may lawfully attend all public dinners in the capacity of chairman, and make any amount of speeches you please.

When you read your brief, leave your writing plainly to be seen on all the pages, for fear your client should not think you had read it.

There is nothing wherein the skill of a queen's counsel more appears than in the management of witnesses, whereof, although some part may fall to the share of the other counsel retained with you, yet you being the principal person concerned, I shall

direct my instructions upon this article to you only, leaving to your learned friends to apply them upon occasion.

First, to avoid burning daylight, and to save your doubtful witnesses, always bring them up immediately after your speech, although the honest ones are first in the order of time.

Let your speech to the jury minutely state the facts they will prove, with the suspected parts of their evidence towards the close, and then call them with their recollection fresh. It is true this may endanger their falling under cross-examination, but they will appear so much the more credible when examined in chief. At other times, without opening their evidence at all, put them at once into the box, to tell their story in their own way, and show they are honest to a degree.

When your witness says too much for your purpose, stop him directly you have got your answer; and to hide the effect, begin your next question before he has half answered the first.

You cannot but observe, of late years, the great extravagance of the profession upon the article of witnesses, which a good leader ought by all means to encourage, both to increase his own fees, and the attorney's costs; this may be contrived several ways, especially when you have several witnesses to prove one issue.

Admissions are very effectual in dispensing with the attendance of witnesses, and you, who are always to consider the advantage of the attorney, should do as much as you can to corroborate them; therefore your business must be to squeeze them as much as possible, when in the witness box, so as to make them give evidence, in such a manner that while most of their evidence goes for nothing, they shall prove some trifling addition to your case, of however slight importance: you may, however, examine them in such a way that they will contradict an admission, and reduce it to nothing; this will procure you many chances of new trials in the course of a term, both on the ground of surprise and the verdict being against evidence; and the admissions thus spoiled can always be used again.

Never let the witnesses prove the whole truth, or you give them as lawful prize to your opponent; and if he fails to make use of them, the judge will see the point, or at least the jury.

When you have opened a strong case for the plaintiff, do not attend to it further, but leave your junior to call the witnesses, and mind your other business; then come back, and if you even find the other side have completely upset you, run over your junior's notes and reply at once.

When you make up your bag for court, put the largest briefs as near the top of the bag as you can, by which means they will

look twice as important, and make a much finer figure, and the consequence will be, moreover, the advertising to the public of the extent of your client's business.

Take care that your own cases are reported, to increase your client's good opinion.

When any point is reserved in a case, do not let the opportunity be lost, but when the trial is over note up your brief with the point in it, and draw out upon it an elaborate argument for the future motion; but the best and most attractive method is, when you note up the point, to jot down cases, quotations, dicta, hints, extracts from the Year Books, and passages from foreign jurists, altogether on your brief; by which you will be sure to lose nothing in the good opinion of your client, and you will take care to cite them for the benefit of the reporters, who will with great diligence misrepresent them all. Leave the subordinate matters of time, place, and other facts, to your junior: to understand them is but loss of time, since all can be done in a general statement, and you will have a better excuse if the proof falls short.

If you have any dull uninteresting cases, involving large sums of money in the result, I advise you, in point of conscience, that these be the first you abandon, for any sporting case of notoriety which will keep you prominently before the public.

When a proposal to refer is made to your client, be gracious to your learned friend who makes it; give him the best assistance you can, for the sake of the attorneys on both sides, and at the first opportunity he will do the same for you.

At consultation, if you be sharp, carry on a conversation about general subjects and the case together in the same breath, in order to disguise your ignorance of the facts, for you know your business well enough to understand them without reading your brief.

When a case is expected to last over dinner or late in the evening, be sure to go away, that no assistance may be rendered which you are able to give; by which your client will lose his verdict, and the value of your services be appreciated.

I come now to a most important part of your public duty, the management of your inn of court, wherein I recommend three requisites, good dinners, contempt of education, and indifference to the interests of the profession. Let your test of the student's qualifications be the weakest you can imagine, which will prevent many gentlemen from entering at all: as to calling men to the bar, call them wholesale, without any examination, which will increase the number of barristers, and delight the public, for a barrister is always a barrister, whether he knows much

law or little; and if the public have plenty of barristers, they cannot complain.

Every barrister must first eat the right number of dinners, for fear he should consider the law a mental exercise; some inns, out of a mistaken generosity, will not make a profit by the dinners, but I would advise you to be more prudent, and get something a head out of every man, a trifle may be enough. Have plenty of good wine in your cellar, and it will be thoroughly appreciated both by yourselves and the judges when they dine with you on grand day.

Never apply your funds to the proper use, nor commence the least reform, for fear of disturbing the system. When it begins to be abused, and before the general indignation is roused, make a movement in the right direction, and propound a small scheme of improvement to the public, who will praise you for your discretion, and entrust all the rest of the management to your wisdom; you may cancel your scheme next term, and in six months get your income unincumbered, to dispose of as you please.

When you call men to the bar, make a speech full of fine language, and conclude by drinking their healths, which will give them a high sense of the ceremony so important to the British advocate.

When you find that you have called a suspicious person, about whom reports are afloat, judiciously close your ears, or screen him in the hall, to advertise the disgrace of the inn.

When a royal birthday or any other grand day is to be observed, give double the allowance of wine to each mess; they will be sure not to drink it, by which good management you will waste some gallons in the course of the year.

There are occasions when, in honour to your profession, you ought to show your kindness to your brother benchers, and especially to the judges; for what signify a few hogsheads out of your enormous funds? They will take care to give you their countenance, and prevent other folks from inquiring, and the public from being benefited; but I would advise you, if a notorious offender be detected to disbar him at once and disown him entirely; which last caution I would have all lawyers observe in both branches of the profession.

If the public allege the inns of court to fall short of their expectation, what is plainer, than that they have other modes of spending their income; that lectures and mootings are not adapted to the present age; that the superiority of the bar in England over that of other countries is entirely owing to the present system?

When you have to try prisoners to relieve the judges (which on many circuits is part of your office), to save trouble, and to make more haste, import into the summing up all the special pleading which you have learnt from the *Nisi Prius* Court, which will edify the jury and complicate the most simple case.

Be sparing of your legal arguments, and let those in the back rows, the juniors, who know pleading, cite all the cases until they have quite exhausted them, by which your client and the attorney will commend your discretion as soon as they have lost their cause.

If a client gives you a watching brief in parliament, you may keep away, and regard the five guineas a-day as your lawful honorarium, for so it is allowed by all barristers, and you do no wrong to the committee or yourself.

If you have a country connection, when any of them call upon you on business, be extremely civil to them, and particularly to the town agent, for the sake of your own interest; to him on all occasions you must have a special regard, as having the best business; for the cream of all the business is with the town agent, as I shall hereafter demonstrate.

Pump your junior at consultation as he displays his learning, which is an admirable way; because, if he happen to start a good point in court, you have to consider that he may make an impression on the judge, the client, and above all, on the attorney, whereas in consultation he may be extinguished without any such result.

When you have pumped your junior, always discourage your client; for success will then enhance his opinion of your abilities, and if it fall out otherwise, he will be less inclined to disparage you.

That your argument may go smooth with the judges, interlard it with their own decisions.

When the minister is going to make an appointment without thinking of you, be sure to put him in mind of your claims, jog his memory and, as you have opportunity, disparage the other claimants, perhaps he may give you the place; but if a rival has obtained a promise, get your friends, the newspapers, and every one that has a seat in parliament, or the least interest out of it, to mention you, and to stand in his way and deter him from fulfilling his engagement. If the minister is sufficiently worried, it may procure you a County Court, and will cost the public nothing.

You need not read up your law to preside over a County Court; because, after deciding a case or two, you can make your own law.

Make application for every vacant place, which is the surest way to get something, for you will certainly lose nothing by asking.

When you go down to a borough as a candidate, take care to observe directly the following method: have at your finger's ends the clap-traps of the party you mean to side with; then manufacture your facts and figures with a strong leaning to extreme measures; then sell out your hard earnings from the five per cents., and diffuse them through the borough, with a good agent to watch accidents; when you get your seat, you can withdraw from all your pledges, which being "craftily qualified," you will have no difficulty in swallowing. If any fellow exposes this proceeding, you may next time (if you think fit) remove to another constituency.

Always add a loophole when you state your opinions, for fear that circumstances should occur to alter them.

A wise lawyer always gives up his independence when he goes into parliament; for he finds which is the most important, his independence or his hopes of preferment; and therefore, to supply the want of independence, after your ambition has extinguished it, vote with fidelity to your party, and when your previous opinions are remembered against you, make three or four convincing speeches to refute them, and your honesty will be appreciated.

If you have sat in more than one parliament, and the minister has given you nothing, you may use several methods to show him some marks of your displeasure, and quicken his memory. If he calls for you to support a motion, you may pretend you are engaged, or suggest some one who is sure not to do it; if he asks your advice, let him stay a while, and then tell him what he knew before; give him always a cold support; make a speech when he wants you to vote; give a hint that you may join the opposition: by these and the like expedients you may be a better man by a puisne judgeship before he resigns office, provided you watch your opportunity, when a vacancy occurs.

If your party is in opposition, your fortune is fixed for ever; a moderate support may procure you the Great Seal; and in such a party I would rather choose to be a lawyer than an under-secretary, or even a dean; it is but steady voting, and little labour, unless your party happens to be rather short of good men, and you are either compelled to find statistics, or to divide the house occasionally; but in any case, the legal questions are your peculiar province; and as the radical party will play deep, or grow peevish, they will change the law so often, that immense confusion will arise to the public who like cheap law, but do not

like the expense of bad law ; when the bill goes through committee, you may find it prudent to suggest clauses apparently in deference to the wishes of the House, so framed as to maintain the emoluments of the profession, and now and then a new clause judiciously inserted will easily pass. Be sure to be in attendance when a division is expected, and be ready with a cheer when your leader makes a hit ; but manage so that you be not called upon to speak, because that will be so much lost to your party ; as by speaking on a general subject of which you are ignorant, you may considerably damage them.

Next to your seat, there is nothing so profitable to you as writing ; in which amusement, you have no competitors, except the newspapers, which are apt to pass over the best arguments ; but you are bound to prevent any such abuses with your party : the newspapers are not to be supposed acquainted with politics, and you may recommend what line of policy the minister dictates.

The profit of a silk gown is now so very inconsiderable, that it is hardly worth mentioning ; it consists only of a small addition to the fee, with an extra guinea for the consultation. If there is a sufficient number of Queen's Counsel on circuit, and a new man of some promise happens to be appointed, manage to play into each others' hands, so that he shall get no business ; this will be but one vexation to him, which is much better than fretting him with delusive hopes ; and it is the office of a good Queen's Counsel to disturb the current of the business as little as he can ; and here your clerk will be of great service to carry out your views. Note, that clients missing are always influenced by substantial reasons, and some will of course disapprove the step taken by the new silk.

Study the creed of your political opponents, until you are as well versed in it as in your own ; and to show your earnestness in coming over, support them so well that you force them to advocate measures they might otherwise abandon, and even drive them out of office. This does credit to your judgment, for it shows a good partizan, and the minister, if he survives your friendship, may one day make you Chancellor.

Your party, when they find themselves compromised, will blame you for not remembering to qualify their opinions. This is a great mistake, nothing being plainer, than that qualifications do not clear up a question, and therefore ought to be avoided ; but if they insist upon it, to prevent the trouble of always qualifying, which is not to be borne by a good renegade, put a mass of statistics at once before the public, and you will find with

only a trifling loss of character, that your party is completely smashed.

When you prepare your election addresses, wrap them in pieces of bank paper, and so let them find their way to the pocket: let the paper be transmitted through an agent, or it may look ugly, if any one petitions.

Keep the public in the dark, to save the best interests of the profession.

D.

ART. VIII.—THE CHANCERY COMMISSION.

The First Report of Her Majesty's Commissioners appointed to inquire into the Process, Practice and System of Pleading in the Court of Chancery. Dated 27th January, 1852.

THE appearance of this blue book produced the strangest effects upon the prophets who prophesy against the Court of Chancery. Before it appeared the court had been a proverb and a bye-word. Journalists quoted Italian, and compared its entrance to that of the *inferno*:

“Ye that here enter leave all hope behind.”

Mr. Pemberton Leigh repeated the lines:

“Facilis descensus Averni, &c.”

Lord Brougham told us we were the vestibule of Pandemonium. Mob orators called us the stable of Augeas. The court was everything, from brimstone to manure. This Report appeared, and everything was changed. The *Times*, only the day before the Coryphæus of moral indignation and dismal prophecy, announced it with the liveliest of strophes, telling the commissioners they had only to carry it out and the Court of Chancery would be the most popular tribunal in Europe.

The session of 1851 marked an æra in English jurisprudence, and in the reformation of legal abuses. The Queen, in the speech from the throne, recommended the administration of justice in the several departments of law and equity to the serious attention of parliament, and intimated to “My Lords and Gentlemen” that their mature deliberation would be imperatively demanded by important changes in the highest courts of judicature in the kingdom. Commissions—not assailed like those which threatened to touch the abuses of the universities, by the narrow-minded bigotry of selfishness and superstition, but wel-

came alike by the bench and the bar,—were issued for inquiry into the jurisdiction, pleading and practice of all her majesty's courts, as well those of common law as those of chancery. And in particular, such commissions issued (in fact, one commission had been issued at the close of the preceding year) addressed to three of the present judges of the Court of Chancery, the Master of the Rolls, Sir George Turner, and Sir James Parker, Mr. Justice Crompton, Sir W. Page Wood, Mr. Bethell, and Mr. W. M. James, and last, not least, Sir James Graham and Mr. Henley, her majesty reposing (so runs the commission to the two latter) "great trust and confidence in their qualifications as men of business,"—authorizing and appointing them, such was the scope of the commission, to make a diligent and full inquiry into, and to report upon, the jurisdiction, process, practice and system of pleading in the Court of Chancery; the manner of conducting suits and other proceedings therein, and the expenses incident thereto; the practice at the master's office, and the duties of the several persons connected with such court, their salaries, fees and emoluments; and to consider and report upon alterations and amendments.

Before the commissioners could well have read their commission, the House of Commons becoming impatient, her Majesty was pleased to command fresh instructions to be given, directing the immediate attention of the commissioners to the course of business before the masters in ordinary of the court, so as to report as speedily as might be upon that branch of reform.

This was done: and before the close of January, 1852, not eight months from the day of their first assembling to examine and take evidence on what they may well call this "large field of inquiry," the commissioners brought forth their first Report.

The recommendation which, we take it, has been most effective in making the Report so popular is that for the abolition of the Master's Office. As it is our intention to follow to the best of our powers, step by step, the course of inquiry pursued by the commissioners, who, treating the subject as a science, have begun at the beginning, we cannot hope to reach in this article to so advanced a stage of equity proceedings as that of which the Master's Office is the arena. But thus much we may state, that the Masters' Offices are doomed. The Report contains their death warrant. On Monday, the 19th of April now instant, the Lord Chancellor presented a bill, intituled "An Act to abolish the Office of Master in Ordinary of the High Court of Chancery, and to make Provision for the more speedy and efficient Dispatch of Business in the said Court." The bill not being yet printed, we can only gather its contents from the Report of the commis-

sioners and the speech of the Lord Chancellor. From these it would appear that the four judges in equity, viz., the Master of the Rolls and the three Vice-Chancellors, each having one chief clerk, and each chief clerk having one second clerk under him, are to carry on in chambers all the business of their respective courts hitherto transacted by the Masters. Henceforward there will be no references to the Masters,—no reports from the Masters,—no statements of facts. All these matters of form are to be abolished, and the judge is to transact in chambers so much of the business of the court as he has hitherto referred to the Master to transact for him. He will go to his chambers at whatever hour of the day he may think fitting or convenient, or even for the whole day, and will there consult with his clerks as to what ought to be done. Should a report be necessary, he will either draw it up himself in his chambers, or will send for the registrars to draw it up for him. The present offices of the Masters in Chancery in Southampton Buildings are to be sold. The Lord Chancellor proposes to take a power to sell them, and the money arising from the sale is to be applied in building three commodious courts for the three Vice-Chancellors, with rooms annexed for the accommodation of their clerks. The Lord Chancellor, in presenting this bill, said he was most anxious that the new clerks should not find their way into Southampton Buildings; “for if they were once placed there, they would act, he feared, as if they were Masters and not clerks, and in that case the scheme would not answer.”

The details of this measure are not yet before us. Upon the principle of it there cannot be two opinions. It may be true that some of the things, for which in future we shall have to pay a judge sitting in chambers 5000*l.* a year, will be similar to those which a Master has done hitherto for half as much. It is possible, too, that the Masters' Offices might yet have found a place for repentance. But the public did not *believe* it possible, and the Masters were doomed by a verdict of the public, which dated long before that of the commissioners. The Masters in Chancery, like the offices in which they sit, had got an ill name, and there was nothing left but to abolish both. Doubtless there will be many dry eyes at their departure.

Bidding farewell, however, to the Masters, we return to the field of inquiry proposed in the commission, and, like the commissioners, we will begin at the beginning.

And here the first great anomaly to be reformed is that implied by the very term *equity* as distinguished from *law*—the existence of distinct courts, actuated by unequal and dissimilar powers, guided by distinct rules, and deciding upon distinct

and often antagonistic principles. Upon one side of Westminster Hall is a court of equity, administering justice in a great measure according to the principles of the civil law ; on the other side of the same Hall, a court of law, governed by the strict legal right, and adhering rigidly to the principles of the common law. Hence arise uncertainty, perplexity, delay, vexation and expense incalculable. The first difficulty of the suitor is in ascertaining to which court he should go. Nor is this merely a difficulty for the suitor ; so narrow is the line of demarcation between law and equity that the most competent practitioner is often perplexed. Even where the facts of the case are clearly ascertained, it has become the science of a life to determine to which tribunal a case belongs, and whether an action at law is maintainable or whether the relief is in equity. After long years of litigation, and longer bills of costs, the suitor in equity may find himself defeated at the hearing, because, in the opinion of the court, he had from the beginning a remedy at law, of which his advisers had been ignorant, or which they had thought too speculative to warrant them in recommending. Even if he has been so fortunate as to select in the first instance or to arrive at last in a court from which he is not dismissed, the timidity of the judge or the inherent weakness of the tribunal compels him to apply elsewhere. If the facts are disputed, the court may consider itself compelled, often after the evidence is completed, to send the matter to a court of law to be tried by a jury ; and even where there are no facts in dispute, a single equity judge, sitting alone, and knowing that his decision will bind the rights for ever, hesitates to decide without assistance. Accordingly he directs a special case for the opinion of a court of law, perhaps simply as to the construction of some act of parliament or some passage in a deed or will, which he ought himself to have been perfectly competent to interpret. The question is argued accordingly before the court of law, and determined ; but after all this, after the question has been determined by a court of law, the judge in equity may not think the opinion of that court satisfactory, and may send it to another, and even to a third. Lord Eldon used to make himself merry with the reflection that in one case, after taking the opinion of the common law courts all round, he had declined to act on any of them, and eventually decided upon his own view of the case.

Still more monstrous is the conflict of jurisdiction when we take into account the ecclesiastical courts. Suppose a testator has disposed by will of real and personal estate. If the will is disputed, the same question between the same parties may become matter for litigation before three distinct tribunals—

the ecclesiastical courts, the common law courts and the Court of Chancery; and the parties entitled may have to resort to all three before they can get at what belongs to them. To get at the personalty they must pass through the proper ecclesiastical court, from which they may be driven by appeal to the Prerogative Court of the archbishop, and ultimately to the Privy Council. Pending these proceedings, as the ecclesiastical court has no power to interfere to protect the property, the parties may be driven to the Court of Chancery to obtain that protection. Meanwhile it may be necessary to recover the real estates against parties who dispute the will, or such parties may bring ejectments against the devisees, in either of which cases the suitors are driven before a third tribunal. Equity has a maxim that the same person shall not be "doubly vexed" by litigation on the same matter in equity and at law. Nevertheless, in spite of its own maxim, it allows these evils; and after all this litigation before every species of tribunal in the kingdom, the very same parties may find themselves again before the Court of Chancery in a suit for the establishment of the will as to real estate, where the rules of the court would require all the evidence to be given afresh. Nor is this all; the court, constitutionally nervous and diffident of the evidence taken before it, (and no wonder, considering its machinery for taking evidence,) may feel itself obliged to direct an issue *devisavit vel non* to be tried by a jury, and the proceedings may be taken through all the stages of litigation to the House of Lords. "*And it may happen that the Privy Council may determine a testator to be competent and the House of Lords arrive at the opposite conclusion, each of such decisions being absolutely final; so that the real estate may be enjoyed under a decision that the testator was of unsound mind, and the personal property under a decision that he was competent, or vice versâ.*"

The commissioners are deeply impressed with the necessity of putting an end to this anomalous state of the law, and of jurisdiction in matters testamentary, and of providing one uniform rule and mode for their decision. Thinking, however, that it is no business of theirs to meddle with ecclesiastical courts, and reserving for a future report the great question of the expediency of removing the distinction between courts of common law and equity, and blending the two into one court of universal jurisdiction, they content themselves with stating their conclusion that, without abolishing the distinction between law and equity, or blending the courts into one court of universal jurisdiction, a practical and effectual remedy for many of the evils in question may be found in such a transfer or blending of jurisdiction, coupled with

such other practical amendments, as will render each court competent to administer complete justice in the cases which fall under its cognizance. The commissioners think that the jurisdiction now exercised by courts of equity may be conferred upon courts of law, and that the jurisdiction now exercised by courts of law may be conferred upon courts of equity, to such an extent as to render both courts competent to administer entire justice, without parties in the one court being obliged to resort to the aid of the other.

In an earlier number of this Magazine we analyzed, with some minuteness, the course of proceedings in a chancery suit; and, while pointing out their admirable adaptation to obstinate and hostile cases, to cases of fraudulent dealings, and in which the parties injured are in the dark as to the details and extent of the malfeazance, we explained that the misfortune to chancery suitors consisted in the abuse of these proceedings, by applying them, at a cost often absorbing the whole amount of the property to be recovered or protected, to every case—to the most simple and amicable as well as the most obstinate and hostile. In particular we applied our remarks to the simple case of administration suits, and ventured to suggest that if in such cases the late vice-chancellor of England could make as many as sixty "usual orders" in an hour; in other words, if the fiat by which the machinery of administration was set in motion was merely "the usual order," and a matter of course, the proceedings preliminary to its attainment might be safely abridged, and rendered in some degree more summary. That the costs of drawing and engrossing the bill, of the service of subpoena upon some score of parties, of office and close copies, of motions to prepare answers, of engrossment of answers and swearing defendants, of special commissions to swear and special messengers to carry the answers, of office and close copies of the answers, of motions to advise on their sufficiency and on evidence, of briefs for counsel and copies of the pleadings for the court,—that all these preliminary flourishes, and in some cases divers more, might safely be dispensed with; and, assuming that the masters' offices were to be retained (for in those days no one dreamt of their abolition), we hinted that it would prove of advantage in certain cases to commence in such offices at once proceedings which, sooner or later, at greater or less expense to the estate which the court professed to protect, were destined to have their commencement. We spoke with diffidence. The commissioners express our meaning more boldly. In many of the cases in which an administration of the personal estate merely is wanted, they are of opinion that the process may be

of the simplest kind, and that *all preliminary pleading may, without any mischief or inconvenience, be avoided.* They are of opinion that if the practice of the judges sitting at chambers be adopted, *an order for the administration of the personal estate of a deceased person may be granted by the judge to any creditor, or any specific, pecuniary or residuary legatee, or any of the next of kin, upon a simple summons served upon the executor or administrator*; the judge being invested with a large discretion as to the granting or refusing the order, and as to giving special directions for its carriage or execution.

So far so good. But this is not all that is required for the purpose of bringing administration suits within the reach of those who would be glad to use them. Hitherto we have spoken of them only as they affect personal property, and so long as the subject-matter of such suits is personal property the proceedings are comparatively simple. The deceased may have left personal property of every conceivable description, and to the amount of many thousands a year; he may have disposed of it in the most complicated manner, and in favour of persons in every stage of disability; he may have left it charged with innumerable debts to unknown creditors; still, of whatever kind and however large, however difficult to realize and tedious in the course of administration, personal property may be fully represented to all intents and purposes by a single individual—the sole legal personal representative of the deceased—his executor, if the deceased remembered to appoint an executor, or the administrator appointed by the ecclesiastical court. A residuary legatee or one of the next of kin, it is true, is still hampered by certain rules, to be noticed presently, respecting parties; but a creditor or pecuniary legatee, seeking payment of his debt or legacy, has only to ascertain the name and address of the executor or administrator of the deceased, and to file his bill, or (if he prefers to avail himself of Lord Cottenham's Order of 1850) to proceed by claim, against such executor or administrator; the court proceeds to administer the estate, and practically all persons interested will be concluded by the accounts taken in that suit.

But it is otherwise with real estate. Time out of mind an acre of land has been of more value in the eyes of the law than the entire national debt; and no rule or regulation of the court, no legislative enactment, has ventured to extend to the case of freehold or copyhold lands an analogous system of representation. The law recognizes no real representation. When, therefore, it is required to enforce any liability against real estate, or to dispose of it for the purpose of the testator's will, every person interested under the will has been considered a necessary party to

the suit. Suppose, for instance, John Smith, after giving an annuity to his widow and legacies of five pounds a piece to his servants, devises his real estate, subject to the legacy and annuities, to his children for their lives, with remainders to such of the children or issue of his children as shall be living at their deaths, with remainders in default of such children to his brothers and sisters for life, with remainders over. He then dies, leaving a widow, some half-dozen children, and as many grandchildren (which we take to be the average number), besides brothers or sisters, and some nephews and nieces. His widow, his six children and half-dozen grandchildren, their issue, if they have any, entitled to contingent remainders, their uncles, aunts and cousins, and all the aforesaid servants of the deceased, are necessary parties to a suit for enforcing any liability against his estate. The only wonder is that his unpaid tradesmen are not also required to be parties.

And after all what is the reason for this distinction? In suits by or against personal representatives questions continually arise of as high importance as any which can affect real estate, and yet the court allows the rights of the absent parties to be sustained by the legal personal representative. Every legatee, so long as it is doubtful whether an estate is sufficient to pay the legacies in full, has an interest to dispute all other claims beside his own. The residuary legatee is the person directly interested in increasing the estate and diminishing its liabilities. Yet the court dispenses with these parties. A creditor or a legatee for a few pounds only files a bill against the executor or administrators only, and the court in that suit takes all the accounts and determines what is due for debts and legacies, nor is it open even to a residuary legatee or other party interested in the residue to dispute the amounts so determined. The fact is, that any other system would be simply impracticable, and the court has discovered this and prudently sacrificed logical consistency to considerations of self-interest.

And to do it justice, it must be admitted that the court has had some regard, even in the case of real estate, to the possibility of carrying its rules into effect. Even in the case of real estate, it allows one creditor to file a bill on behalf of himself and all other creditors. And if the real estate be administered in a suit not instituted by a creditor, finding it simply impossible to require the creditors to be defendants, the court protects their interests in the same manner, and certainly as efficiently, as in a suit relating to mere personalty. In another class of cases it has relaxed its rule with still greater liberality, by allowing a tenant in tail under a will to represent the estate.

For instance, if in the case supposed above, John Smith, instead of devising immediately to his children for their lives, had commenced his will by a limitation to one in tail, the courts would have considered the estate sufficiently represented by such tenant in tail, and disregarded all the subsequent limitations. The tenant in tail may be a consumptive child, or an incurable lunatic, so as to make it morally certain the entail will not be barred; still the limitations over are no less disregarded. The limitations in favour of the testator's six children, and their six grandchildren, may be morally certain of becoming vested, but the court regards them for this purpose as of no importance. Only substitute for the certainty that the estate tail in the dying child, or hopeless lunatic, will determine, the indefinitely remote contingency—the “possibility upon possibilities”—that an indefinite number of married persons with large families will all die without leaving any issue surviving, and the vigilancy of the court revives. The limitation over, which the most speculative actuary would not value at a shilling, becomes in the eyes of equity as important as the fee simple in possession. It must be represented by the party interested. The court refuses to proceed in his absence. The uncles, aunts and cousins must again be brought before the court. No conceivable object being attained, unless it be the addition, large in itself, but small comparatively, to the items in the bill of costs.

“The loss occasioned by costs,” to use the measured language of the Commissioners, “seems not to have been adequately appreciated by courts of equity.” Morbidly anxious to do complete justice and afford complete protection, they have adopted rules which in the end have resulted in the impoverishment and ruin of the parties to be protected. To protect the cestui que trusts they have embarrassed all proceedings in respect of the estate. The costs thus increased fall ultimately on the persons sought to be protected. “And such costs, creating certain loss, fall upon *all* cestui que trusts of trust estates in Chancery, in order that *some* cestui que trusts may escape the risk of possible loss from their interest being left to the protection of their trustee.”

We say trust estates generally, for the difficulty is not confined to the real estates of deceased persons. Whenever any property, real or personal, is vested in trustees—other than personal estates vested in executors or administrators as such—the general rule of the court requires that all the cestui que trusts should be parties to any suit relating to the property.

The Commissioners have not salved over these sores. They have probed them to the quick, and the remedy they propose is

commensurate with the disease. They think it most desirable that the principle of representation now applied to personal property, should be universally* applied to all cases of real property, and to all cases of trust estate. They think it most desirable that in cases of trust property, the trustees should for all purposes in equity, represent it in the same manner, and to the same extent, as executors or administrators represent the estates entrusted to them, and as assignees do the estates of bankrupts and insolvents. They also think *that a representative of the real estate of a deceased person should be provided, who should have the same powers of representing and dealing with the real estate as the executor or administrator has with respect to the personal estate.* And should the legislature accede to their recommendation of providing such a representative, they see no objection to the same summary course of proceeding being adopted in the case of real estate generally, as they have suggested in the case of personal estate: that is to say, they would allow creditors and legatees, without any preliminary pleading or other proceedings, to apply to a judge sitting at chambers for a summary order for the administration of the real estate of the deceased, as against the real representative, and would give the judge the power of granting such an order upon a simple summons served upon such real representative, such power to be subject to a large discretion as to granting or refusing the summary order, and as to the special directions he may think fit to give as to its carriage and execution.

Before leaving the subject of administration suits, we must notice a recommendation of the commissioners less extensive but scarcely less important, so far as it extends, for doing away with the rule of the courts alluded to above, which at present obstructs suits instituted by residuary legatees, or one of the next of kin. We have seen that a creditor or a pecuniary le-

¹ By a recent General Order the court has already taken one step to get rid of the serious inconvenience of making all persons interested in the real estate parties to a suit. By the 30th order of the 26th of August, 1841, it is provided that whenever the estate is vested by devise in trustees empowered to sell and authorized to give receipts for the rents and profits, and for the produce of the sale of the real estate, such trustees are to represent the real estate in the same manner and to the same extent as executors and administrators do the personal estate. The commissioners find this rule has worked well, and think it may be beneficially extended. They therefore recommend that in all cases where the whole of a testator's real estate is by devise vested in trustees, who are by the will empowered to sell and authorized to give receipts for the rents and profits, and for the produce of the sale of the real estate, the same summary method should be applied to the administration of real estate as they have suggested with reference to personal estate.

gatee files his bill against the executors or administrators only, and practically all persons interested are concluded by the accounts taken in that suit. But if the bill¹ be filed by a residuary legatee, or by one of the next of kin, then all the residuary legatees, and all the next of kin, all the representatives of deceased residuary legatees and next of kin, all persons entitled under settlements made on the marriage of any such legatees or next of kin, and all incumbrancers on their interests, are necessary parties to the suit. It is needless, and would occupy more space than we can afford, to illustrate the endless ramifications of such a suit, or to show the crowd of parties, which in consequence of this distinction would be brought before the court. Its practical working is to create great expense without any adequate advantage. We congratulate residuary legatees and next of kin, who have not yet been deluded into filing bills of complaint, that the commissioners see no reason for retaining such a distinction. They think that in every such case a residuary legatee, or one of the next of kin, ought to be at liberty to obtain his decree in the same manner as a creditor or pecuniary legatee might do against the legal representative only. Notice of the decree to be given to the other persons interested, who are to be at liberty to attend and watch the accounts and proceedings, which are to be binding on them as if they had been named as formal parties to the record. This will at once secure their rights, and protect the legal representative from the possible vexation of fresh suits in their behalf.

The ambition of courts of equity, so laudable in itself, but so disastrous in its consequences, to do complete justice, is not confined to suits for administration. It extends to every branch of equitable jurisdiction. The court is determined to make in

¹ If the proceedings are commenced by a claim instead of a bill, the only person who need be named as a defendant in the first instance is the person against whom the relief is directly claimed; and after a decree or order made on the claim, directing a reference to the Master, a certificate from him issues, under which the parties interested are summoned, and such parties are thenceforth named and treated as defendants to the suit. This is under the Orders of April, 1850. The court had by a previous Order provided that in cases such as those mentioned in the text copies of the bill may be served on such persons as there mentioned, who, without being otherwise made parties to the suit, are bound by the proceedings in the cause, although they may not think proper to appear. This rule, the commissioners state, has not been found so extensively applicable or so beneficial as was anticipated by its framers. From some doubts and difficulties in applying it, and the expense of serving examined copies of the bill, and the necessity of serving them again after every amendment, it is falling more and more into disuse.

one suit a final determination between all persons having an interest in the subject-matter, or else to make no determination at all. Hence all the vexatious rules respecting parties. There is probably nothing in chancery proceedings which has tended so much to augment expense and delay as the rules of the court as to parties. A settlement is executed in contemplation of a marriage. The marriage is solemnized. Children are born, and perhaps marry in their turn; and in the meantime trustees die, or are removed, and others are appointed in their stead. At length it is discovered that a breach of trust has been committed, or that some of the trust property has been improperly alienated, and the parties are advised to institute proceedings with a view to the execution of the trusts of the settlement, an account of the trust funds, and the recovery of the property improperly alienated, or the making good the loss occasioned by the breach of trusts. But equity will not interfere, except conditionally. It will do complete justice, or none at all. What are the consequences? The father, the mother, all the children, the husbands of married daughters, the trustees of their settlements, infant grandchildren, all the persons beneficially interested in the trust property, all the surviving trustees, all the persons necessary to represent the estates of deceased accounting parties, all persons, and the representatives of all persons, liable to contribute to the loss, are required to be parties. If a partnership firm be amongst the persons liable, the rule would require not only all the partners, but the representatives of deceased partners. And if nobody has thought it worth his while to prove the will, or to take out administration to the estate of such deceased partner, or of any other deceased person having an interest, the plaintiff is driven to the Ecclesiastical Court, there to take proceedings for compelling some person to administer, or, in default, to obtain letters of administration to a nominee limited to the purposes of the suit, and such nominee administrator "who," says the Report, "serves no useful purpose whatever," is made a formal party to the suit in chancery, is served with process, puts in an answer, and appears by counsel.

Take again the effect of the rule as to parties on suits for foreclosure or redemption. The rule requires all parties having a prior right to redeem to be parties to a bill for redemption, all incumbrancers on the equity of redemption to be parties to a suit for foreclosure. The estates may be subject to some score successive mortgages; they may be charged with twice as many judgment debts, all registered and kept alive; they may have been conveyed to trustees for the benefit of scheduled creditors; the persons interested in the estates may have died, having made

complicated dispositions of their property; all the persons so interested must be parties to the suit relating to such incumbrances. A mortgagee who has secured his debt on the estates of a protectionist in Buckinghamshire, already somewhat incumbered, discovers that the incumbrancers who had gone before him, more cautious than himself, had secured their debts upon estates of the same protectionist in Oxfordshire. These collateral securities, with their divers judgment creditors, trustees, cestui que trusts, and scheduled creditors, must be brought into the suit, which thus continues to "wander at its own sweet will,"

"Labitur et labetur in omne volubilis ævum."

This is no caricature—we could illustrate each and all of these mischievous results—all arising from the complete justice principle—by causes we have had to do with in days gone by, and all still "depending and at issue in her Majesty's High Court of Chancery at Westminster."

And it appears again, and in a form scarcely, if at all, less mischievous, in the aversion of the court for decrees merely declaratory. For years past the chambers of several counsel have been haunted by the periodical visitation of a mass of papers in a suit which shall be nameless, instituted for the sole purpose of hearing the court construe these words in a will, following a residuary bequest to the testator's son Esau for life, "And after his decease to such of my sons as shall be then living, and the children of such as shall be dead." Esau died, leaving children, and the question was, whether they took an interest in the residue. The property was small, the parties poor, and consequently prolific; several residuary legatees had encumbered their shares, and fresh discoveries were made from time to time of persons who ought to have been parties. Amendments followed, and supplemental bills, till at length, after years of so called "friendly litigation," for the suit was an amicable one,¹ to use the words of a learned friend of Lord Eldon's, now gone to his rest, "a compromise broke out," the parties, under the influence of their solicitors, whose costs began to be in peril, agreeing to execute a deed by which the surplus, amounting, as near as we remember, to zero, should be divided in the proportions therein mentioned. For this miscarriage more abuses than one in equity procedure were accountable, but not the least of those abuses was the steady aversion of the court to partial and declaratory relief. It knew very well what the clause meant, but it would not declare what it meant without taking accounts and administering the estate, which no soul living wanted to have taken or administered,

¹ It arose before Sir George Turner's Act, mentioned presently.

and this could not be done in the absence of any party who might eventually be held entitled to a fraction of zero.

So where an estate is incumbered, and there is a question of priority between two incumbrancers, in which no other party is concerned, such question cannot be determined except in a suit of the most comprehensive kind, to which every incumbrancer, and the owners subject to the incumbrances, must be parties.

It is true the evil is in some degree mitigated by the very recent act of Sir George Turner, enabling parties, by agreement, to take the opinion of the court upon a special case without further pleading. But why confine this wise and most healing remedy to cases of agreement? Why enable a single impracticable party to compel a compromise to which he has no shadow of title by insisting on a strictness of pleading which circumstances may have rendered it impossible to comply with? The commissioners state their opinion that the principle of Sir George Turner's Act should not be confined to cases where the parties can agree to take the opinion of the court on a special case, and they recommend that it should be competent to the court in every case to adjudicate by binding declarations on questions arising between the plaintiffs and defendants where they alone are interested in such questions, and *that it should no longer be an objection to a suit that it seeks a decree merely declaratory.*

But to return to the subject of parties to a suit, the rules as to which we left in a state of very considerable intricacy, difficult to be understood, more difficult to be remembered,—often impossible to be applied, and always fearfully expensive in application. The commissioners have on this subject some pretty sweeping recommendations. To reduce the number of parties to suits, they propose that one residuary legatee or next of kin, and one legatee, or other person entitled to a charge on real estate, and one devisee, or one of several coheirs, may respectively institute suits for the administration of personal estate or real estate, and obtain a decree without serving the other parties having a like interest; that the same rule be applicable to one of several cestuis que trust seeking the execution of trusts under any deed or instrument; that an executor or administrator or trustee may in like manner sue one of several legatees, next of kin or cestuis que trust; that in all suits for the protection of property during litigation, or to restrain acts in the nature of waste, any person may sue on behalf of himself and all others having a like interest; the court in all cases to have power to require other parties to be served, and notice of the decree to be given to the persons who would be necessary parties to the suit at present; and they are thereupon to be at liberty, on an order of

course, to attend proceedings before the Master, and also are to be bound by the proceedings, after notice, whether they attend or not. Within a limited time parties, upon whom notice is served, may apply to the court to add to the decree. They also recommend that trustees, in whom real and personal estate is vested, shall represent their cestuis que trusts in the same manner and to the same extent as executors in suits as to the personal estate represent the parties beneficially interested. And lastly, that it shall never be necessary to take out administration ad litem; but that where there is no personal representative, the court may either proceed without one, or appoint a person to represent the estate of the deceased, giving notice, if it think fit, to any person interested.

The foregoing are the amendments recommended by the commissioners with a view to amend the rules of the court as to parties. We have still to show the means by which they propose to remove the difficulties already mentioned as affecting suits by mortgagees and other incumbrancers. Here there is more practical difficulty. It is obvious that if, after a mortgage to A., the property has been mortgaged to B., C. and D., and A. files a bill of foreclosure, A. seeks relief directly against B., C. and D., who are all interested in contesting or reducing his demand, and are all interested in taking the accounts of his receipts if he has been in possession. And now that judgment debts duly registered and kept alive are made equivalent to equitable mortgages, the difficulties in the way of foreclosure and redemption are increased. The commissioners are of opinion that a plaintiff, who has a right against a defendant in respect of a mortgage incumbrance, ought to be relieved as much as possible from all these difficulties, and ought not to be delayed, as he at present is in many cases, by the necessity of settling rights between other persons interested in the equity of redemption. Any collateral rights to be ascertained or remedies to be administered, by reason of the payment, should, they think, be the subjects of distinct collateral proceedings, from which the plaintiff in that suit should be wholly relieved.

Where a plaintiff is entitled to a decree for sale of the mortgaged estate, the estate may be sold at once, and the plaintiff's demand satisfied, the surplus money remaining in court as a fund to be applied towards satisfaction of the claims of the defendants when ascertained. But the court cannot pronounce a decree of foreclosure until the priorities inter se of all the incumbrancers subsequent to the plaintiff's have been ascertained, the effect of which rule is that the plaintiff's remedy is delayed by the necessity of settling rights between the defendants. The commis-

sioners bring out this distinction forcibly in their Report, and express their opinion that in foreclosure suits the court should possess the power of directing a sale instead of a foreclosure, at the request of the mortgagee, on such terms as the court may think fit to direct, and also at the request of any subsequent incumbrancer, or of the mortgagor on his making such deposits, and on such other terms as the court may think fit to direct.

In addition to the recommendations above mentioned as to parties, the commissioners state it as their opinion that the practice¹ of setting down a cause merely on an objection for want of parties should be abolished.

They also recommend that the misjoinder of persons as plaintiffs should no longer be a ground for dismissing a suit; but that whenever it shall appear to the court that, notwithstanding the want of interest in some of the plaintiffs, or the existence of some ground of defence affecting some or one of the plaintiffs, the plaintiffs or some of them are entitled to relief, the court shall have power to grant relief, modifying its decree according to the circumstances, and for that purpose to direct such amendments, if any, as may be necessary.

Thus far we have attempted to follow the course of inquiry pursued by the commissioners, pointing out from time to time the remedies they recommend. In our next number we hope to resume the subject in its later stages. In the meantime, for the convenience of our readers, we shall so far forestall the subject, as to exhibit in the commissioners' words a brief summary of the recommendations contained in this their first Report,—recommendations which, judging from what passed in the House of Lords on the 19th of April, will be in a fair way of becoming law before we next go to press.

SUMMARY.

“ We have reserved the important subject of the jurisdiction of the court for a further Report, but have stated our opinion that the juris-

¹ This practice is under the 39th and 40th Orders of the 26th of August, 1841. These rules, the commissioners think, have not been found practically beneficial. It is often impossible to ascertain until the hearing of a case whether any particular person who is absent from the record is really a necessary party or not, so that the result of setting down the cause upon the objection for want of parties has frequently been merely to reserve the objection until the hearing. In other cases the objection may be apparently valid upon the bill and answer, but may be removable by evidence, which is not capable of being brought before the court until the hearing. The commissioners state, that they are not aware of any case in which the court has exercised the liberty of dismissing the plaintiff's bill on an objection for want of parties, and that there have been few cases in which it has been able to make a decree saving the rights of absent parties.

diction, both of courts of law and courts of equity, should be extended so as to render each court competent to administer complete justice in all matters within its cognizance, without resort to the aid of the other.

I.—ADMINISTRATION SUITS.

“ In this class of suits we have recommended :—

- “ That any creditor or legatee, whether specific, pecuniary or residuary, and also the next of kin of any deceased party, should be at liberty without any preliminary pleading, or other proceedings, to apply to a judge sitting at chambers, for a summary order for the administration of the personal estate of a deceased person as against the personal representative.
- “ That the same summary method should be applied to real estate where there are trustees competent to represent the whole real estate.
- “ That the same mode of proceeding should be adopted in other cases in the administration of real estate, for the payment of debts or legacies, if the legislature should accede to our recommendation of providing a representative, with the same power of representing and dealing with real estate as the executor has in respect of the personal estate.
- “ But that the judge should have a large discretion as to granting or refusing the summary order, and as to the special directions which he may think fit to give for its carriage and execution.

II.—PARTIES.

“ We propose to reduce the number of parties to suits by the following regulations :—

- “ That one residuary legatee or next of kin, and one legatee or other person entitled to a charge on real estate, and one devisee, or one of several co-heirs, may respectively institute suits for the administration of personal estate or real estate, and obtain a decree without serving the other parties having a like interest.
- “ That the same rule be applicable to one of several cestuis que trusts, seeking the execution of trusts under any deed or instrument.
- “ That an executor, or administrator, or trustee, may, in like manner, sue one of several legatees, next of kin, or cestuis que trust.
- “ That in all suits for the protection of property during litigation, or to restrain acts in the nature of waste, any person may sue on behalf of himself and all others having a like interest.
- “ The court is in all cases to have power to require other parties to be served, and notice of the decree is to be given to the persons who would be necessary parties to the suit at present, and they are thereupon to be at liberty, on an order of course, to attend proceedings before the master, and also are to be bound by the proceedings, after notice, whether they attend or

not. Within a limited time parties upon whom notice is served may apply to the court to add to the decree.

“ That trustees in whom real and personal estate is vested shall represent their cestuis que trust in the same manner and to the same extent as executors in suits as to the personal estate represent the parties beneficially interested.

“ That it shall never be necessary to take out administration ad litem; but that where there is no personal representative, the court may either proceed without one, or appoint a person to represent the estate of the deceased, giving notice, if it think fit, to any person interested.

III.—FORECLOSURE SUITS.

“ We recommend—

“ That in foreclosure suits the court may always direct a sale at the instance of the mortgagee, on such terms as the court may think fit to direct, and also at the request of the mortgagor, on his making a deposit, and on such other terms as the court may think fit.

IV.—MISJOINDER.

“ We recommend—

“ That misjoinder of plaintiffs be no longer a ground for dismissing the suit.

V.—PARTIAL AND DECLARATORY RELIEF.

“ We recommend—

“ That the court may adjudicate upon and declare rights without requiring the whole of the trusts of a will or settlement to be executed and without taking the accounts, and that it should no longer be an objection to a suit that it seeks a decree merely declaratory.

VI.—PRACTICE OF SETTING DOWN A CAUSE MERELY ON AN OBJECTION FOR WANT OF PARTIES.

“ We recommend—

“ That the practice of setting down a cause merely on an objection as to parties should be abolished.

VII.—BILLS OF REVIVOR AND SUPPLEMENT AND SUPPLEMENTAL BILLS.

“ We recommend—

“ 1. The total abolition of bills of revivor, and an abolition of such bills of supplement as are now required merely for the purpose of bringing further parties before the court, in consequence of any interest having accrued or having been transmitted to such parties.

“ 2. The abolition of all supplemental suits now rendered necessary by the rule that matters which have occurred subsequent to the date of the filing of the bill cannot be introduced by amendment; and we propose that they should be introduced by amendment.

VIII.—EVIDENCE.

" We recommend—

- " That the existing system of examining witnesses upon written interrogatories should be abolished.
- " That affidavit evidence should in general be admissible.
- " That rules should be made to prevent the prolixity and multiplication of affidavits.
- " That any party should have a right to have the witness produced by *vivâ voce* examination.
- " That either party should have power to compel witnesses to give evidence in any proceeding.
- " That affidavits may, upon all interlocutory applications, be read against the answer, which should be regarded in such cases as an affidavit only.
- " That when witnesses are examined *vivâ voce* it should be before a competent person, in the presence of both parties, and that the examination and cross-examination should be by the parties or their counsel or agents.
- " That the statement of the witness should be reduced into writing by the examining officer in the form of a narrative, and read over to the witness in the presence of the parties and signed by him.
- " That the court should always have power to call for and examine, or require the examination of any witness.

IX.—BILLS OF DISCOVERY AND COMMON INJUNCTIONS.

" We recommend—

- " That the jurisdiction of the Court of Chancery of compelling discovery in aid of actions at law actually commenced, or in defence to such actions, should be transferred to the Court of Common Law, and that the common injunction should be abolished.
- " That the injunction to stay proceedings at law upon the merits of the case may be moved for as a special injunction.

X.—PROCEDURE UP TO THE HEARING.

" We recommend—

- " That the bill containing a concise narrative of the material facts and circumstances on which the plaintiff relies, should be retained as the ordinary basis of the proceedings.
- " That the bill or claim should in future be printed, and that a print should be filed with the proper officer instead of the engrossment.
- " That a print of the bill or claim should be served on every defendant in lieu of serving a writ of subpoena or writ of summons, which writs should be abolished.
- " That the print served on each defendant should have an indorsement addressed to the defendant to the same effect as the present writ of subpoena or writ of summons, and should be stamped by the officer with a proper stamp, indicating that the bill or claim has been filed.

- “ That in order to provide for cases of urgency, the officer of the court should be empowered to receive a written copy of the bill or claim upon the undertaking of the plaintiff's solicitor to file a printed copy within a time to be limited.
- “ That when it is necessary to amend the bill or claim, a reprint of the whole, or part, should be made, except in those cases where, from the limited extent of the amendment, they could conveniently be made on the printed copy.
- “ That a bill should not contain any interrogatories; but that when an answer is required from any defendant, the interrogatories, duly authenticated, should be delivered to the defendant from whom an answer is required, or his solicitor, within a limited time after appearance.
- “ That it should not be necessary for any defendant to answer the bill, unless interrogatories are delivered for his examination.
- “ That where the plaintiff does not require an answer from the defendant, the defendant should nevertheless be at liberty, without leave of the court, to put in a plea or answer to the bill, within the ordinary time allowed by the court for that purpose.
- “ That after the ordinary time allowed by the rules of the court for answering, a defendant, not required to answer, should not be at liberty to put in an answer, without leave from the court, to be obtained by application to a judge at chambers.
- “ If the judge should extend the time for answering, the plaintiff's right to move for a decree should in the meantime be suspended.
- “ That the time allowed for answering, as of course, should be much shorter than at present, but with power to a judge at chambers to enlarge it, on the application of a defendant.
- “ That the answer should still be the answer to the bill containing the defendant's defence, as at present, and not merely an examination on the interrogatories.
- “ That it should be open to a plaintiff at any time after the expiration of the time allowed for answering, to move upon affidavit, and upon proper notice, for such order or decree as he may think himself entitled to. That such a motion should be allowed to be made at any time before replication; and if made after answer, the answer should, for the purposes of the motion, be treated as an affidavit.
- “ That it should be discretionary with the court to grant or refuse the motion for a decree, or to make an order, giving such directions for the future prosecution of the suit as the circumstances of the case might require.
- “ That in those cases in which the plaintiff may not require an answer from the defendant, he should still be at liberty to obtain the production of documents in the defendant's custody or power, by application to a judge at chambers.

- "That the defendant should also be at liberty to apply to a judge for an order against the plaintiff for production of documents in those cases in which he has been served with notice of motion for a decree.
- "That a similar practice as to production of documents should be adopted in suits by claim.
- "That the answer of a defendant should require no further or other formality than is required in the swearing and filing of an affidavit.
- "That the defendant, after he has put in his answer, should be at liberty to deliver interrogatories for the examination of the plaintiff, and to procure orders for production of documents by him.
- "That when the cause is not disposed of upon motion, it should be put at issue as at present, except that the form of replication should be altered to meet the case of a defendant who has not been required to answer and has not answered.
- "That when the cause is at issue, the plaintiff should within a limited time give notice to the defendant whether he means to proceed by oral evidence or by affidavit; and unless the defendants, or one of them, should within a limited time afterwards give notice that they or he desire the evidence to be oral, both parties should be at liberty to verify their case by affidavit.
- "That where the evidence is to be oral, it should be taken by the proper officer in London or the country.
- "That no commission is to be issued, the appointment being authenticated by the signature of the judge.
- "That a power should be given to the court to direct the examining officer in London to take evidence in the country.
- "That the evidence, being completed, should be transmitted to the Record Office by the officer, and authenticated by his signature, to be preserved and referred to if necessary; but the parties should be under no obligation to take office copies of such evidence. That a day should be fixed for completing such evidence corresponding with the time now prescribed for passing publication.
- "That notwithstanding the election of the plaintiff or defendant to proceed by oral evidence, affidavits of particular witnesses or affidavits as to particular facts may, by consent, be admitted and used; and that such consent may be given on behalf of married women, infants and other persons under disability.
- "That where the parties proceed by affidavit, a day should be fixed for filing the affidavits on both sides, and no affidavit should be afterwards permitted, unless by special leave of the court.
- "That either party should (at his expense in the first instance) be at liberty, within a limited time afterwards, to cause any deponent to be produced for cross-examination and re-examination *vivâ voce*.

XI.—CASES FOR THE OPINION OF COURTS OF LAW.

“ We recommend—

“ That the practice of the Court of Chancery sending cases for the opinion of a court of law should be discontinued.

XII.—ACTION AT LAW TO TRY LEGAL RIGHT.

“ We recommend—

“ That the Court of Chancery should itself decide and ascertain questions of law and fact, necessary for the decision of a question on which the right of a plaintiff suing in that court might depend, using for that purpose, when required, its power of submitting any question of fact to a jury, by means of an issue.

XIII.—MASTERS' OFFICES.

“ In lieu of the present proceedings in the masters' offices, we recommend a course of proceeding which would render it unnecessary to retain the office of a master in chancery.

“ We recommend that the court itself should determine many matters which are now referred for inquiry to the master.

“ That the judges of the court should sit at chambers for the purpose of disposing of such matters as cannot be conveniently disposed of in open court.

“ That officers should be attached to the several courts, to perform the duties now usually performed by the master's chief clerks, and that such officers should also be employed in verifying the facts stated in petitions, and in making inquiries for the guidance of the judge, who would then in many cases be enabled to act without the formality of a report.

“ That in cases where, as for instance in the investment of trust monies on mortgage by the court, the master has been in the habit of referring the title to some conveyancing counsel, the court should receive the opinion of the counsel.

“ That in cases of specific performance, as soon as it is ascertained that the court will direct a performance of the contract, if the title be good, the party objecting to the title should be bound to specify his objections, and that these objections should be argued before the court.

XIV.—MODE OF TAKING ACCOUNTS.

“ With regard to the taking of accounts, we propose that the mode of proceeding by charge and discharge, and states of facts, should be discontinued; and that the accounting party should bring in his statement of account and furnish a copy to the opposite party, and that it should be at once proceeded upon before the officer, and, as far as practicable, continuously.

“ That the account, when settled, should be kept in the office for the purpose of reference, and should not be annexed to the report by way of schedule.

“ That the court should have power to give special directions in certain cases, such as where accounts are directed after a long lapse

of time, in order to obviate the hardship of taking such accounts in strict judicial form; and that in some cases, particularly in partnership and mercantile cases, the books of account should be allowed to be taken as *prima facie* evidence of the account.

XV.—POWER OF COURT TO SEND REFERENCES TO PROFESSIONAL PERSONS.

“ We suggest that the court should be empowered to make references, in suitable cases, to merchants, accountants, engineers, actuaries and other scientific or professional persons, as officers of the court *pro hac vice*.

XVI.—METHOD OF PROCEEDING IN REFERENCES GENERALLY.

“ Our recommendations on this subject are to the following effect:—

“ The total abolition of the system of warrants.

“ The discontinuance of states of facts and charges, except in special cases where a concise statement might be necessary.

“ The abolition of office copies, and the substitution of copies furnished by solicitors.

“ That reports should merely state the order of reference, and the conclusion upon it.

“ That the officer should be at liberty to certify any matter specially to the court, pending an inquiry, in order to obtain a decision for his guidance in the further prosecution.

“ That the court should fix a time in the order of reference, within which the officer should state what had been completed, what remained incomplete, and why.

“ That the practice of objecting to the draft of a report should be abolished.

“ That in all cases now requiring a petition for leave to except, a party should be at liberty at once to except to a report.

“ That the court should abstain, as far as is practicable, from referring it back to the officer to review his report, and instead thereof should itself decide the matter in dispute.

XVII.—AS TO THE CONTINUANCE OF MASTERS.

“ We recommend that, if our suggestions be adopted, no vacancy should be filled up, but that the arrears of business under pending references should be ascertained, and a competent number of masters retained for a limited time to despatch them.”



ART. IX.—EMINENT MEMBERS OF THE BAR.

—
SIR WILLIAM PAGE WOOD.

CONTINUING our notices of the eminent Members of the Bar, and proceeding to the Chancery Courts, we cannot select a better subject for a sketch of one of the leading members of the Equity Bar than the Solicitor-General of Lord John Russell's administration, Sir William Page Wood. With one consent he has procured for himself from the bench, and from his colleagues of the inner and the outer bar, the sincerest respect. Known to and admired by all are his earnest desire to have the law administered in its purity and integrity alike to every suitor: his thorough knowledge of the defects of the machinery by which alone redress can be obtained: his unabated determination to render the court in which he has practised available for all, and thus preventing its being made the medium of pecuniary injustice to those who can afford to use it, and of most unfair exclusion to those whose means are small, and who dare not enter its portals: his own personal independence: his sincerity and conscientiousness: his devotion to the highest objects of an honourable profession: his indifference to all that savours of mere advancement for personal objects: his cautious but strenuous advocacy: and his nice power of discrimination between the principle of varying decisions. It was not an empty compliment, when Sir J. Lewis Knight Bruce, in the recent—all but hopeless—case of *Reynell v. Sprye*, expressed the high estimate he had formed of his judgment and of his mode of conducting causes. Whilst others are more subtle, or more daring, he is admitted to be acute and persevering. His knowledge of law is extensive and sound; and his acquaintance with human character, and with the motives which regulate men in the common concerns of life, far above the average of practitioners in the courts of equity.

The gentleman whom we have thus selected for notice is the second son of the well known reformer Sir Matthew Wood, who for many years uninterruptedly represented the city of London; who never wavered in the support of the principles he espoused; and who merited and received the esteem of all political parties. Mr. W. P. Wood was born in 1801, and having proceeded to complete his education at Trinity College, Cambridge, took there in 1824 a wrangler's degree. Mr. Cowling was senior wrangler, and it has been numbered among the good years. Mr. Wood immediately afterwards entered himself at Lincoln's Inn, and

was in due course called to the bar in 1827. He had in the mean time been elected to a fellowship in his college, which he retained till his marriage in 1830.

It is not always that those who have the advantages of a father's position and wealth, or who have themselves a moderate competency, devote themselves at once to that closeness of study, which future success at the equity bar requires. Herein this branch of the profession differs largely from the practitioners in the common law courts. The junior in chancery has all the details of a cause to arrange from the commencement; he has to watch it through every step; all the pleadings have to pass under his eye; he has to advise on the sufficiency or pertinency of the answers; he has to determine what proofs will be required, and to draw the interrogatories. He has little or no assistance from his leader up to the hearing. The cause is virtually conducted in all its chief parts by the stuff gownsmen; he it is who has to raise the points for argument; and on him rests the responsibility of putting the cause fairly at issue. All this is done at chambers without consultation with a person of greater experience, and the labour is as heavy as the duties are important. Whereas, at the common law, the pleader, who draws the proceedings, is usually an adept in all the intricacies of his art; the record goes into the hands of the junior barrister perfect in all its parts; and the leader has all the responsibility of proving the case, of marshalling and extracting the evidence from the witnesses, of addressing the jury, and of impressing the judge. No duties can be more distinct than those of the juniors in the different branches; and hence it is that men on their first entrance upon their profession in the courts of chancery find the drudgery too annoying, and the field for distinction too remote; they therefore grow careless in their work, and, if they have moderate means at their disposal, give up the path they have selected. Mr. Wood was not one of those to turn back when he had once put his hand to the plough. In all the essential points of an equity draughtsman he showed skill and ability; he avoided prolixity; his bills were distinguished for their compactness and yet for their compactness; he never lost sight of the main strength of his case by encumbering it with too many of the minor circumstances, and yet he was always up in the small points, to assist his leader in the arguments, and to prevent any part of the whole from being lost. The Queen's counsel indeed found him as useful in the court as the client had proved him to be in chambers.

He did not exhibit any rash haste in assuming the honour of the silk gown. The premature desire to lead has been the ruin

of many an equity barrister's fortune; it is no easy matter to form an exact estimate of what will be the result of such a step; to some it has proved the loss of a large income; and with every one it is a subject to be most seriously considered. But there comes a time, when it is necessary that a junior of some standing should give up what for a time has been the more lucrative branch of his calling, and embark his fate in the lottery of the leadership. In 1845 Mr. Wood took this necessary step, and a very short period elapsed before the confidence of his clients demonstrated that he had not miscalculated his powers.

Addressing a single judge, and speaking upon evidence and facts, which have been submitted to the counsel before he comes into court, it is not eloquence or impassioned oratory that is needed from a counsel in Chancery, but sufficient fulness, clearness, and accuracy of expression; a closeness of reasoning which is repeated in different and varied forms often enough to operate fully on one mind accustomed to weigh and to distinguish the logical force of the argument; and added to all, such an intimacy with the law, and such an application of the circumstances of each case to the authority of former decisions, as will carry along with the advocate the immediate judge whom he is addressing; and as will also bear repetition before an appellate tribunal, should the decision in the primary court be afterwards questioned in the superior court before another judge. More than ninety years ago Oliver Goldsmith pointed out the fact, that the eloquence which speaks to the passions was a species of oratory almost unknown in England; at the bar it had been quite discontinued, as he thought with justice, and in the senate it was used but sparingly, as the orator spoke to enlightened judges; at the Chancery bar especially all impassioned oratory is out of place. The speaker cannot feel with emotion, and he cannot therefore make his expressions with the same movements. "To pretend that cold and didactic precepts will make a man eloquent, is only to prove that he is incapable of eloquence." Yet cold and didactic precepts are among the matters which have to engage the attention of those who practise in Chancery; and as this entirely prevents all possibility of eloquence in court, so it often tends to a habit of prolixity, which makes the courts of the Lord Chancellor, of the Master of the Rolls, or of the Vice Chancellors, places of little resort, except to those whose professional business forces an attendance. There is no more opportunity therefore for display in a leader here, than there was in the Charleston court on the other side of the Atlantic, where Lord Carlisle found only "seven persons present, five of whom were judges, one was the lawyer addressing them, and the other was the opposing counsel, who

was walking up and down the room." Mr. Wood's mode of address indeed would not be suitable to any audience less enlightened than that before which he practises. He is scrupulously exact in all his statements, and his deductions from his argument are often refined to the nicest point.

When he was made a Queen's counsel, the custom had become general for the leaders to confine their practice mainly to one particular court. Thus Mr. George Turner and Mr. Kindersley were leaders at the Rolls; Mr. Bethell before the Vice Chancellor of England; and Mr. Russell before Vice Chancellor Knight Bruce. Mr. Wood selected the court of Vice Chancellor Wigram for his own immediate practice, and here he soon raised himself to an acknowledged leadership, second only to Sir J. Romilly: it may be said that they almost divided the business of the court between them; there were few important cases in which they were not antagonists, and we refer to the reports of the cases argued before Sir J. Wigram, and to the decisions given by him, to prove that there has seldom been a court in which cases have been more carefully or more accurately sifted. Few indeed were the appeals from that court to Lord Cottenham, and fewer still were the instances in which the Vice Chancellor Wigram's decision was overruled. Cases of miscarriage there must always be in every court; cases of doubt too, on which the decision of the highest tribunal is called for cannot be unfrequent; but there existed a general and proper confidence in this branch of the court, and in its decisions; in no way diminished by the particular interest which the Vice Chancellor himself took in the cases in which his judgment was appealed from, and the anxiety he evinced that the reason and the grounds of his decision should be made patent to the Court of Appeal by the counsel who had to support the judgment of the court below. We could instance many of the decisions in proof of the sound legal knowledge brought to bear upon the cases argued: we could epitomise many of those arguments: but in a sketch of a legal career, which may be prolonged for years, and which has been almost without a drawback, there is no need of devoting a large portion of our space to this branch of our subject.

Whilst Mr. Wood was thus employed in his profession, he did not wholly exclude from his attention matters of large public interest—not altogether connected with, though closely allied to, a liberal profession. He did not act up to the notion that "to know one profession is enough for one man to know, and this (whatever the professors may tell you to the contrary) is soon learned." He was not contented therefore with one good employment, and has not found that "if you understand two

at a time, people will give you business in neither." He devoted himself zealously to the supply of the educational and the spiritual wants of the poor district of Westminster, with which he was immediately connected. Nor did he limit his assistance to any one portion of the country. He took an active part in the promotion of religious and moral education, by means of one of the great public societies, the National Society: he has been the ardent and most useful expounder of its exertions and its claims to public support; and when the controversy unfortunately arose between these societies and the Committee of Privy Council for the purposes of Education, Mr. Wood was looked upon for aid in the attempts to arrange the differences. To him was given the difficult task of

"Promoting concord and composing strife."

Mr. Wood's own views seem to be that the state may give efficient help in aid of local exertions, and may fairly insist on the proper application of the grants in the places to which they are made; but that upon the exertions of the people themselves, rather than upon a state dependence, must mainly rest the effectual education of the masses. To an exclusively secular education he is wholly opposed. Into the wide and complex question of national education, we need not now enter: at the controversies which have marred the best efforts of the best disposed men, we need only glance thus cursorily; but it must be confessed that the perseverance and assiduity, coupled with the judgment and the temper of Mr. Wood, well fitted him for an adviser in the difficulties which have sprung up. Had the same judgment and temper been displayed by a numerous and active section of the Established Church, we should have seen those differences happily terminated, and the wide and common field of action open to all more fully and more advantageously occupied.

To give a wider scope for his exertions Mr. Wood determined to enter parliament, and at the dissolution in 1847 he came forward for the city of Oxford upon those principles of progressive reform which had been long and honourably connected with the name he bore. He was returned without a contest. His ambition here has contented itself by applying himself to the ordinary business of legislation, to the amendment of the ecclesiastical defects in the church—to which he is firmly attached, whilst he has sought to extend civil and religious liberty,—and to the reform in the modes of legal procedure and of the electoral system. He has attempted no lofty flight of eloquence: he has sought rather to persuade than to command: he has brought a large fund of general learning to bear usefully upon the practical

details of business : and he has won for himself the ready ear of a house, in which it is well known strong prejudices are entertained against the members of the legal profession. Moreover, he has demonstrated that he has not been fettered by his professional studies and modes of thought and argument.

The difference between a successful lawyer and a sound politician has been recently and well pointed out by the "Times." "It is not at all strange that a first rate lawyer should make a third rate politician. The same faculties and habit of mind which achieve success in the one pursuit might seem liable to impede it in the other. The lawyer has to deal with a given state of facts, which no power of his can alter or controul : his intellectual vision is sharpened to exquisite keenness on the objects immediately submitted to it, but is essentially narrow in its field and short in its range. Accustomed to concentrate all his energies on the contest of the moment, he cares little to look beyond ; he deals rather with words than things, and is content if he can persuade the audience he addresses. The statesman must not only think and speak, but act. He is the judge as well as the advocate ; he must look to the future as well as the present, and stake his success rather on his power of anticipating results than of presenting plausible views of them. The vision of the lapidary is not more different from that of the astronomer, than the eye of the true statesman from that of the mere lawyer. Of course there are many statesmen who sink below the dignity of their employment, and many lawyers who rise above it." Sir W. P. Wood is one of them. He was not long in the house before he proved that he was not only a lawyer, but a politician ; that he was willing to act, and not merely to argue : in the first session, he became an authority with the house on matters within and without the range of his profession : and more recently, he urged them to act, not to talk, and to admit the Jews to seats by resolution and not by legislative enactment. Strong in his feelings in support of the church in its integrity, and, as a consequence, anxious to provide a remedy for its admitted defects, almost his first address to the house was made upon this congenial subject. Mr. Horsman had brought before the Commons the returns of the Ecclesiastical Commissioners, which demonstrated that, owing to the mode in which the arrangements with several of the bishops had been made, they received a larger annual income than, as he contended, the intention of the act of 6 & 7 Will. IV. c.77, permitted. Mr. Wood denied that this act of parliament had been infringed, admitting, however, at once the necessity of an alteration in the act of parliament : he argued that there was no redundancy of bishops when one see extended from Jersey to the

mouth of the river, and another reached from the Humber to the Thames : he pressed upon the House the want of an additional number of working clergy : and he insisted on the necessity of revising the powers of the Ecclesiastical Commissioners, and of making a new appropriation of the church revenues. He was followed by Lord John Russell, by whom he was specially complimented on the part he had taken in the debate. He repeated his wish for increased aid to the working clergy of the church out of its own funds, when the hon. member for Cockermouth again pressed upon the House the consideration of the distribution of the surplus of episcopal revenues : and he directed public attention to the streets in the immediate neighbourhood of the house itself as an evidence of the want, where, out of a population there of 60,000, no less than 39,000 attended no place of worship whatever, dissenting or church : and he subsequently advocated an inquiry into the full value of all church property under lease. He advocated also the reformation of the Ecclesiastical Courts, as deeply important to the best interests of the church, believing that it had "suffered great damage by the existence of the miscalled Ecclesiastical Courts, or Courts Christian, a still worse misnomer," whose "oppression was only equal to their inefficiency."

He carried out his pledge to the electors to support a reform in the administration of the law by speaking in favour of Sir John Romilly's bill, to enable all persons interested in encumbered estates in Ireland, instead of having their property wasted in litigation in Chancery, to sell that property, and have their rights to the money determined in a more ready and expeditious manner than by a decree in that court.

In matters of electoral reform he also took an active part; he opposed indeed the ballot; but he brought prominently before the House the interference of the Marquis of Exeter in the election for Stamford, and after a sharp division he carried his committee.

His chief speech, however, during the first session, was in support of the second reading of Lord John Russell's bill (7th February), for the removal of the Jewish disabilities. On religious, rather than on political, grounds, and as a member of that church, which he believed to embody the purest form of Christianity, he called upon the House to support the bill; twenty years before, he had signed a petition in favour of the Jews, and reflection, he said, had strengthened his conviction, that the removal of these disabilities was a measure which was sanctioned by considerations of justice, truth, and policy : he traced succinctly the history of persecution for religion's sake from the

time, not of Constantine, but of Theodosius; he combated the argument that Christianity was part and parcel of the common law of this country; he showed that during the proceedings enacted against those, who existing in the church maintained opinions contrary to the common feeling of those in the church, and thereby raised disturbance, the Jews were never thought of, for they were banished from this country from the 8th of Edward I. until the time of the Commonwealth; he disposed of the cases in Chancery which had dealt with the property of Jews; he contended that it was most monstrous and unchristian that this country should make use of the Jews—that we should avail ourselves of their services and their wealth as far as we could—and yet deny them the privileges of citizenship; and he effectually silenced the argument drawn from the necessary extension of like privileges to Hindoos or Mahometans, by citing the act of parliament which allowed us to have a Mahometan governor-general of India, or a Mahometan member of council in that country. The speech was rightly characterized as very able; it did efficient service to the cause he espoused.¹ One of the principal merits of Sir W. P. Wood's parliamentary speaking is his earnest devotion to the cause he takes up, and the persuasive force with which he draws opponents first into his line of reasoning, and next into the same mode of treating the subject as he himself adopts.

During the following sessions he has continued often to take part in the debates. He urged upon the House the claims of populous parishes to an increased church accommodation; he supported very efficiently the alteration of the parliamentary oaths; he lent his aid to the improvement of the Incumbered Estates Commission; and he was among the number of independent supporters of the government, who pressed upon Lord John Russell the necessity of extending the basis of the representation of the people. In his addresses he studied brevity rather than display; and there was a heartiness in his manner well suited to this mixed and critical assembly.

Interesting himself as he does in all questions relating to the moral condition of the people, he entered into the debate on 27th February, 1850, and spoke against the second reading of the bill for altering the law of marriage to allow the marriage with a deceased wife's sister. He subsequently published his speech, with some suggestions in the appendix, wishing to "contribute by every means in his power to counteract a measure which he believed to be fraught with the most disastrous consequences to the purity and the happiness of the homes of Eng-

[¹ We of course thus state the opinions advocated by Sir W. P. Wood, without in any degree expressing our own.—ED.]

land." The speech was throughout clear and powerful, and it told well in the House. He first approached the consideration of the subject on grounds wholly independent of the Divine approbation or disapprobation of these marriages. He denied that a marriage might not be prohibited, even if it could not be shown to be forbidden by the law of God, and referred to the cases of heathen nations who had no revealed will of God to guide them, but nevertheless had their marriage laws, and their restraints, more or less stringent, in respect of marriage; indeed every nation had some rule on the subject; and he declared it to be remarkable, that in proportion as they found a nation advanced in its general tone of morals, so did the restrictions become more positive and decided. He noticed that, although among Asiatic nations, not only polygamy was allowed, but marriages with sisters of the whole blood were permitted, yet that the nations of Europe allowed not polygamy, and the Romans, who were as distinguished for their sturdy morals as for their sturdy valour, were very strict in their marriage laws, that it was not till the relaxation of their morals that they relaxed their laws about divorce and marriages; and in this he instanced with effect the case of the Emperor Claudius, as reported by Tacitus, who was desirous of marrying his own niece, and who, after a long delay before he dared to bring forward his proposal to the senate, at length persuaded them to permit the emperor's marriage with the lady who poisoned him. He next addressed himself to the moral and social question, and he asked whether those who sought the change had carefully considered the social relations of our English homes as compared with those of foreign countries. He pictured most fairly the points which distinguished our own country, viz. "the confident frankness and innocent familiarity and liberty of our unmarried women on the one hand, and the deep devotion and the domestic attachment of our married women on the other;" the one appearing to him to be the natural consequence of the other; and he instanced cases in which evils had already occurred from a degradation of moral feeling in respect of this subject. He next answered the arguments adduced in favour of the proposal, showing that it was not needed by the poor, and it was only a certain portion of the middle class, small when compared with the entire population of the country, which had broken the existing law; and then proceeded to demonstrate that the church of England had always interpreted the law of Leviticus (chap. 18) as being of general and not merely of Jewish obligation; and that it was not a mere party in that church, but the bulk of the members of the church who opposed the bill. He argued that the prohibition was of

Divine authority; holding that the "commandment was exceedingly broad," he gave it, as the church had done, its full breadth, not seeking to narrow that which had been the Christian interpretation for centuries, to suit the mind or tone of the present age; and he thus wound up what was undoubtedly a speech of strong reasoning, by saying—

"To my mind, convinced as I am that the prohibitions are founded on a general and not a particular law of God, and that the awful penalties denounced against the Canaanites are held out as the sanction of that law, it appears that any one, who has but a doubt as to the interpretation of the particular verse, will not hesitate to retain the law of England unaltered. Instead of admitting the argument that we are bound to show a clear prohibition, I say that where the penalties are so awfully denounced; where the moral feeling of all Christendom, no less than its religious convictions, has, till the last few years, acquiesced in the law as we happily yet hold it, the only safe course of action is to abide by the existing state of things, and not to step into a new path, the commencement, I fear, of a downward course of all that is high and sacred in our social relations. See what inconsistencies there are in the right honourable gentleman's course. Last year he would have you allow a marriage with a wife's niece; this year, not. Again, by the proposed bill, the clergy are allowed to adhere to those canons to which they have avowed obedience, and which prohibit these marriages. It would have been very unjust were it otherwise; but yet, in what position are the daughters of members of the church whose affections may be entangled, and may then be told, your pastor will not marry you. He has a conscientious objection to do so; and the same law which allows you to marry your sister's husband allows him to refuse the solemn sanction of the church to your union. I trust it is not yet too late to call upon all thoughtful men, on grounds of public morals, no less than upon those of a more sacred character, to oppose this first relaxation of the marriage code; of a system on which our English homes have been founded, and in which may they ever be maintained in their distinguished purity!"

We believe that this is his only speech which has been published by him in a separate and corrected form. It was not, however, the only speech of this session which would have been worthy of a reprint. When the attack was made upon the policy of Lord Palmerston, with reference to the affairs of Greece, Mr. Wood was called upon in the earliest part of the debate to answer the legal and technical objections, which a mere technical opponent had raised in the course of that celebrated *Nisi Prius* debate. Mr. Wood attempted no brilliancy, and resorted to no rhetorical artifices; he was plain, straightforward and hearty, and he rendered much assistance to the government.

It was not to be supposed that talents so ready of use; that a character so frank and free; that one who drew to himself and

returned so much cordial good-will ; that one, of whom it is no exaggeration to say

“ All, who deserve his love, he makes his own ;
And, to be loved himself, needs only to be known ;”

would fail to attract the particular notice of the Whig premier, whose pursuits and whose views in church matters, and on the great subject of education, were congenial to those of the member for Oxford. Accordingly, when, in 1849, Mr. Horace Twiss's death caused a vacancy in the office of Vice Chancellor of the Duchy of Lancaster, Mr. W. P. Wood was selected as his successor. The proceedings in this court deal with all matters of equity relating to lands holden of the king in right of the Duchy of Lancaster, and these proceedings are or ought to be the same as on the equity side in the courts of Exchequer and Chancery. Bad as the forms and modes of proceeding in the Court of Chancery still are, they have been worse ; from time to time, they have been amended. Not so, or at any rate not to the same extent, has the Duchy Court of Lancaster been improved ; and when Mr. Wood took the appointment of Vice Chancellor, he avowed his determination to effect a thorough reformation, or, failing that, to give up the office.

Soon, however, he had before him a wider field for the exercise of his determination—to prevent the state of our equity courts from continuing a disgrace to a civilized country. The demand for a reform in the proceedings of the Court of Chancery had now become urgent. The attempts of governments to drive off all inquiry had been rendered useless ; the suitors as well as the counsel and solicitors were fully acquainted with the defects in the working of the system, and although non-professional men could not point out immediately the particular mode of redress, all were agreed that the time had arrived when a thorough reform must take place. Accordingly, on the 11th of December, 1850, her majesty issued her commission, among others, to Mr. W. P. Wood, to inquire and report upon the process, practice and system of pleading in the Court of Chancery, the manner of conducting suits and other proceedings in such court, and in the offices connected therewith, and the costs, charges and expenses incident thereto ; the practice of the Masters' offices ; and the duties of the several officers connected with the court, and their salaries, fees and emoluments. The scope of the inquiry was somewhat large, but it was at once evident to straightforward reformers of the system that it did not embrace all the points which it was necessary to touch upon, if the report were to be of any real worth. The commissioners, we

believe, unanimously suggested an increase of their powers, and on the meeting of parliament the inquiry was extended to the "course of proceeding and practice in and the jurisdiction of and exercised by the High Court of Chancery, and the several other departments of justice administered by and under the authority of the Lord Chancellor, and incident thereto; and to consider and report whether any, and if any, what alterations and amendments tending to improve the administration of justice may be made in or in relation to such court and respective departments, or the course of practice and proceedings therein, or the jurisdiction thereof or incident thereto." The commission had not, however, proceeded far in its sittings, when, upon an address of the House of Commons, the Queen added to the commission Sir James Graham, Bart. and J. W. Henley, Esq., being "persons not of the profession of the law," but "qualified as men of business to assist in and make more effectual the labours of the commissioners." It would have been almost impossible to have made a better selection of commissioners. They applied themselves with diligence and with sound zeal to the task set before them, and though we are aware that the conduct of the inquiry mainly rested with Sir J. Romilly, it is certain that Sir W. P. Wood was not only an efficient, but also a most persevering member of the body, and that he was not the least forward in applying the pruning knife to the excrescences which had engrafted themselves upon our equity system. He gave his fullest concurrence to the first report of the commissioners, noticed at length in another article, and he especially approved of the main changes set out by that report, viz. the abolition of the existing system of examining witnesses upon written interrogatories, and the substitution of affidavits and examinations *vivâ voce*; the transfer to the common law courts of the jurisdiction on bills of discovery in aid of actions at common law, and the abolition of common injunctions; the discontinuance of sending cases for the opinions of courts of law; the decision by the Court of Chancery of questions of law and fact by means of a jury when required, when a legal right is to be tried; the abolition of the monster grievance of the court, the Masters' offices, the judges sitting at chambers instead; an improvement in the mode of taking accounts, and the reference of suitable cases to merchants, accountants, engineers, actuaries, and other scientific and professional persons. Following close upon the heels of this report was the introduction by Sir W. P. Wood of a bill, prepared by Lord Truro, for the abolition of the fee system in the court, and for a reduction of useless payments and offices. As the question of Chancery Reform, however, is treated of else-

where, we need not here pursue the subject: we will only observe, that no one acquainted with Sir W. P. Wood's character can doubt for an instant his being in earnest when he declared this bill to be but an instalment of the alterations that would be proposed; but it is rather unfortunate for the reforming reputation of the last holder of the great seal, that no actual bill was ready to carry out the commissioners' recommendations when the Whig government came to its abrupt termination. There is an appearance of insincerity in the matter which has been dexterously laid hold of by the present ministry; and a large share of honour is claimed for Lord St. Leonards, in taking up the report of the commissioners, though if we may judge from his own examination before them, on the question of altering the system of taking evidence, he was not quite so ardent a reformer then as his political friends now make out. The subject is by no means exhausted by this first report: a bill with the sole object of abolishing the offices of the Masters will not carry out the recommendations already made; and we trust that the commissioners will not long delay a further report.

Whilst the labours of the commission were proceeding, the elevation of Sir John Romilly to the Mastership of the Rolls took place, and in March, 1851, Mr. Wood received the appointment of Solicitor-General to the sovereign, whose birth upon English soil was owing to the generous assistance of Mr. Wood's father. He must have felt peculiar satisfaction in being thus called upon to serve his Queen. From her he received the usual honour of knighthood. His constituency re-elected him without a contest, and he demonstrated to the ministers the propriety of the selection they had made, by conducting with great tact, temper and discrimination the progress through committee of the vexed question of the Ecclesiastical Titles Bill, which occupied so large a share of the last session.

After this proof of his efficiency, and with his high standing in his profession, public repute pointed him out as one of the fittest persons to receive the appointment of one of the Vice Chancellors, added to the court before Michaelmas Term. It was not possible to conceive that he would have been passed over, and the public were surprised to find that he was not named for the new office. Their surprise was at an end when they had heard that the office had been offered to and declined by the Solicitor-General. His reasons for not accepting the offer were given with his usual frankness to his constituents. He stated to them that he did not enter upon public life till he had acquired a competency: that office came upon him unsolicited and unexpectedly, and was accepted by him in the hope

that he might do some public service; and that he refused the offer of one of the vacant places, filled up by the appointments of Sir James Parker and Sir George Turner, because he hoped to serve the public better in his capacity of a member of the bar and of the legislature.

He has formed no exaggerated estimate of his power to do his country service. His self-denial has procured for him the satisfaction of every one who knows his willingness to carry out the good work he has commenced: and he has demonstrated that the greatest devotion to the public interests is no more incompatible with the most ample forensic distinction in these later times than it was in days of yore.

ART. X.—FORSYTH ON JURIES.

History of Trial by Jury, by William Forsyth, M.A., late Fellow of Trinity College, Cambridge. Parker and Son, London.

THIS is a very interesting work. Mr. Forsyth has studied the history of juries with a degree of research, diligence and skill we have seldom seen surpassed, much as we differ from him in most of his conclusions.

The topics into which the book is divided are these:—the nature of the jury system; the ancient tribunals of Scandinavia; the legal tribunals of ancient Germany; the judicial system of the Anglo-Saxons; the Anglo-Norman period; the jury in the time of the Plantagenets; the jury ceasing to be witnesses, became judges of evidence; jury system in civil trials; jury in criminal cases; the grand jury, and other matters relating to criminal trials; requirement of unanimity in the jury; on the proper province of the jury; the jury system in Scotland; the jury in America; trial by jury in France and other parts of the Continent; introduction of trial by jury into the criminal procedure in Germany; illustrations of trial by jury in the case of English state prosecutions; the jury considered as a social, political and judicial institution.

Appendices follow.

Mr. Forsyth's first inquiry is as to the origin of juries, and he arrives therein at no definite origin at all. It is, he thinks, traceable as a gradual and natural sequence from the modes of trial in use amongst the Anglo-Saxons and Anglo-Normans. Has Mr. Forsyth examined the laws of Moelmwd, a British

king, who reigned about 400 years before the Roman invasion. The chances are that he will find traces of it there long before Norman or Saxon were thought of.

Mr. Forsyth rejects the twelve Saxon compurgators, whose oaths were conclusive on the matter in dispute, as the origin of our juries. Perhaps this was not their origin, but it may have well been their forerunner. Mr. Forsyth, however, insists strongly on the fact, that their province was that of a tribunal, and not of a jury of the people chosen therefrom.

“ Few writers (he says) when speculating on the rise of the jury, have kept this principle of its being separate from the court, and employed solely to determine questions of fact, steadily in view. They have generally confounded the juries with the court, and have thus imagined an identity between the former and those ancient tribunals of Europe, where a select number of persons—often twelve—were taken from the community, and appointed to try causes, but who did so in the capacity of judges, and when satisfied of the evidence awarded and pronounced the doom. These are the *Geschwornen-Gerichte* to which the jurists of Germany of late years have been so fond of appealing, as the model upon which they wish to reform their modern courts of judicature, and which they assume to have been in principle the same as the English jury.”

The fact is, that juries in much more recent times have been still less analogous to what they are now, being literally witnesses rather than jurymen according to the present acceptation of the term. And so Mr. Forsyth shows, yet he uses the former disparity of old juries, when they were *judges*, as decisive against their being the origin of our own, but he does not repudiate their more recent identity, although they were then *witnesses*! This is not consistent. The more rational theory is, that the institution of juries, however it began, has been handed down through various changes of form and constitution incidental to the changes of successive times, and the character of their jurisprudence.

The history of juries in other countries is admirably given, and the curious reader will find much choice food for the antiquarian and juridical historian.

The few remarks we can alone make on this interesting work must be confined to the more exciting and important records of juries in our own country.

Before the Anglo-Saxon period, Mr. Forsyth finds no record of juries in England. During that period twelve persons sat, not as juries, but as judges, and in important cases twelve others appeared as compurgators, who in effect were witnesses for the accused. This continued after the Conquest until the “*assise*”

of Henry II. Justiciars then replaced the old Saxon juries as judges. There were at first six circuits and eighteen itinerant judges, and then four circuits and fifteen judges.

Mr. Forsyth will not allow that any juries previously existed such as juries now are, or had been before the Conquest, and he calls the twelve, who were summoned in the reign of the Conqueror to decide on the judgment in favour of the king's title to certain land claimed by Bishop Gundulf, compurgators. Now these twelve were to confirm the judgment, *or reverse it*, and Mr. Forsyth himself tells us they *retired together for a short time*, and on their return into court swore that the judgment given was right and true. Mr. Forsyth, in the teeth of Sir F. Palgrave, who speaks of these twelve as a jury, says "they were merely compurgators." He admits that they so far differed as to confirm testimony they had themselves, at the trial, already given. Not only so, but they clearly acted as a jury act, in a deliberative capacity, and returned what was in terms as well as in spirit a verdict. They were twelve in number. We humbly submit that they even more closely approached to a jury such as we now have them, than in the succeeding epochs, when they were more allied to the character of witnesses.

Mr. Forsyth afterwards says, "the veredictum of a jury was always an estoppel against any averment to the contrary of manifest fraud or perjury, and this could only be done by a subsequent proceeding." Very like our juries!

Even in the reign of Henry II., when jurors were regularly summoned, Mr. Forsyth will not admit that they were juries: "We see (he says) then that this proceeding by assise was no-thing more than the sworn testimony of a certain number of persons, summoned to give evidence on matters within their knowledge." And what are juries now but persons sworn to give evidence on matters brought before them? The main, if not the only, difference is that in temp. Henry II. the jury gave verdict according to their own personal knowledge of the facts; in our days according to the personal knowledge of others detailed to them. It is idle to argue that the latter has not sprung from the former institution. They are all but identical. In the time of the Plantagenets he adheres to the same view. In fact it is not until the 11 Henry IV. that an act is passed, that the jury ought not to see or take with them any other evidence than that which was offered in open court—then and not till then, as far as we can understand Mr. Forsyth, did juries become juries in England.

Some very pertinent remarks follow on the powers and duties of juries.

Mr. Forsyth is a staunch admirer of juries. He backs them by instances of their useful conduct in opposing the tyranny of unjust judges: forgetful we fear of the shoals of cases in which they have worked injustice.

The practice of the County Courts ought to be fatal to the high notions of the immense popularity and value of juries—when every one can have a jury, few ask for it!

“At times (he says) impatient murmurs may be heard against the ignorance or perverseness of juries, and their verdicts are unfavourably contrasted with what are supposed likely to have been the decisions of a learned and clear-sighted judge. Within the last few years an innovation has taken place of an important kind. The act establishing the County Courts has substituted single judges for juries in all cases within their jurisdiction, where neither of the litigant parties claim to have the cause heard before the latter tribunal. But a still greater change consists in the number of the jurors. The old immemorial twelve are no longer required, but the jury is limited to *five*, whose verdict determines the facts in dispute. The reason of this, no doubt, has been a conviction on the part of the legislature, that the great majority of causes which would be tried in the County Courts were likely to be of too trifling a nature to justify them in throwing the burden of attendance upon a larger number. But in selecting an uneven number like five, and still requiring their verdict to be unanimous, they seem to have been impressed with the idea that, in case of difference of opinion, there must necessarily be a majority, who are more likely to influence the dissentients than where the numbers are equally divided. The allowing judges to decide both facts and law, in claims limited to a certain amount, is nothing more than extending to civil cases the principle which entrusts magistrates with the power of summary conviction in minor offences.

“In the outlines of a proposed code lately put forth by the Society for Promoting the Amendment of the Law, one of the articles is—‘All questions of fact shall be determined by the judge, unless either party shall require them to be determined by a jury.’ This corresponds with the provision in the New York code previously quoted, which enables the parties in a cause, by mutual consent, to dispense with a jury. And certainly, as regards the public, no fair objection can be taken to such a plan, for *volenti non fit injuria*; and there seems no reason why, if both parties desire it, they should not be at liberty to forego a jury trial. But an additional burden would thereby be thrown upon the judges [none worth naming—the writer is practically experienced in the matter]; and this deserves consideration, as will be noticed hereafter. The opponents, however, of the civil jury say—and it may be admitted—that juries are sometimes mistaken, and their verdicts wrong. I believe that this happens much less frequently than the objection implies, and chiefly in those cases where there is such a conflict of evidence and probabilities as would render it difficult for any tribunal, however constituted, to arrive at

the truth. The presiding judge has, by the tendency and bias of the remarks which he makes in summing up, the means of influencing and guiding them to a right result; and they have generally the good sense to avail themselves of all the help afforded by his perspicacity. And in the power of granting a new trial, the courts possess an effectual, though it must be confessed an expensive, remedy, against verdicts in civil cases, which are manifestly improper. True it is that causes are sometimes submitted to the decision of juries with which they are unfitted to deal. Such are questions arising out of long and complicated accounts, and other matters of a like kind; but these ought never to be brought before them. The only proper tribunal for such inquiries is the *forum domesticum* of the arbitrator; and experience ought by this time to have taught parties the folly of incurring in those cases the costs of appearing in court, where the almost inevitable consequence is, that the cause is referred to arbitration after much unnecessary expense and delay. It would not be difficult for an opponent of the system to cite ludicrous examples of foolish verdicts, but they would be a very unfair sample of the average quality [nothing of the kind]; and nothing would be more unsafe than to make exceptional cases the basis of legislation. [They are, unhappily, by no means exceptional.] In a country like this, which is one vast hive of commerce and manufactures, and where so large a proportion of civil actions arises out of transactions in trade, it may with certainty be affirmed, that the persons most likely to understand the nature, and arrive at the truth of the dispute between litigant parties, are those who are conversant with the details of business, and engaged in similar occupations themselves. [The commercial men think otherwise, and detest juries.] And such are the men who constitute our juries. [Not once in ten times.] It may well be doubted whether Lord Mansfield would have been able to elaborate from the principles of the common law, cramped and fettered as it was by the technicalities of a bygone time, the noble system of mercantile law, which has immortalized his name, without the assistance of juries of merchants [of merchants, but not of our jurymen], who so zealously co-operated with him in the task of applying the legal maxims of the days of the Henrys and Edwards to questions arising upon bills of exchange, charter-parties, and policies of insurance. Nor must we forget the many other advantages of this mode of trial, which have been already noticed in an earlier part of the present chapter.

"It was said of Socrates, that he first drew philosophy from the clouds, and made it walk upon the earth. And of the civil jury it may also be said, that it is an institution which draws down the knowledge of the laws to the level of popular comprehension, and makes the unlearned understand the nature and extent of their legal rights and remedies.

"Supposing, however, that we were to abolish it, what tribunal are we prepared to substitute in its place? Are we to throw the burden upon the judges, and make them, like the Scabini of the Franks, decide disputed facts as well as expound the law?"

We question whether any one is prepared for the abolition of juries. The question is, shall they be rendered optional, at any rate in civil cases? Mr. Forsyth is chargeable with much one-sidedness in his way of putting the case in the above passage. He cites the change as to juries made by the County Courts in reducing the number from twelve to five, but he wholly shirks the mention of the conclusive refutation which the experience of these courts afford to his high-flown eulogia on juries—namely, that the millions of suitors and defendants in them rarely, if ever, avail themselves of juries, but voluntarily reject them. The *vox populi* at least is outspoken, and it gives a flat contradiction to nearly everything Mr. Forsyth has said about the merits of juries. What shall we say of the fairness or philosophy of a writer who rakes up and cites strings of instances in which juries have acted well, and been of service to justice, and omits the shoal of instances in which they have in former times proved their venality; and in our own times, at each assize and quarter session, defeat justice and exhibit the most incredible perversity of wrong judgment? Look at the atrocious criminals who are yearly let loose on society by juries. In hopeless ignorance and folly, the Kent jury, who acquitted a prisoner and recommended him to mercy, were really no worse than many of their brethren throughout the country. We quite, nevertheless, agree with Mr. Forsyth that we ought never to surrender the guarantee of *the power of having juries*, both to the criminal, the suitor, and the defendant. It is a valuable safeguard against the tyranny and incompetency of bad judges, of which, unfortunately, we stand in need even at this time (in at least one judicial instance), which would render the absence of juries a perfect curse. But surely this is no reason for thrusting their general incapacity and waywardness on the criminals and suitors who would rather be without them. And that this is the all but universal feeling of the people in civil cases is undeniably proved by the practice of the County Courts.

This book, as we said before, contains the results of most interesting and fruitful historical research, and is in so far most valuable; but as to its arguments in favour of juries, we never read anything weaker on this somewhat hacknied subject. The writer seems to ignore nearly every strong fact and argument against his own prepossessions.

Mr. Forsyth carries his idolatry of juries actually to the length of defending the maintenance of grand juries. He thinks that this antiquated incumbrance on justice, and useless hindrance to the dispatch of business, is defensible, because it often rescues innocent men from the ignominy of a trial, forgetting that they

would be just as triumphantly vindicated by that trial. He also thinks, in evident ignorance of the facts, that magistrates who have committed persons thus rescued are thereby usefully reproofed ! Why nobody knows even who they were, and if they did, what reproach or reproof is there in a difference of opinion as to the exact amount of evidence requisite to send a man to trial ? All kinds of different standards exist. Then he thinks it teaches justices law to be charged by the judge. Let the charge then continue, and the judge address judicial homily to the county on the state of the calendar ; but why subject every one to the nuisance of a preliminary trial by this inferior tribunal, who just as often ignore bills which ought to be found as not, and find those they ought to ignore. It is a great pity that Mr. Forsyth did not attend a few assizes and sessions before he wrote a book so full of rich facts and worthless opinions.

ART. XI.—STRICTURES ON JUDGES.

Strictures on the Practice of Judges who act as Prosecuting Counsel. With Remarks on Criminal Proceedings at Quarter Sessions. By a Member of the Temple. London : Butterworths. Dublin : Hodges & Smith. 1852.

A BOLD title and a stinging pamphlet. Not undeserved, though we confess we think there are graver matters of complaint against judges than that of examining witnesses for the prosecution, instead of handing briefs to hungry juniors. At the same time, do not let us damage the just weight which the censures before us ought to have. The practice is an improper one, and let the author of this remonstrance tell his own tale, and exhibit this minor wrongdoing, without disparagement, simply because there are major ones which go scathless.

There is no gainsaying this; for example, “does not the duty of a judge, when trying a prisoner, require his anxious and undisturbed attention ? The life or liberty of a fellow-subject is perhaps in jeopardy. The functions of the judge are, calmly to take the evidence adduced in support of the criminal suit, and the testimony given to prove the innocence of the accused. He surely ought, in such a case, to hold the scales of justice impartially upright ; taking care, on the one hand, that the laws are not broken with impunity, and, on the other, that no individual,

no matter how friendless or forlorn his condition, be punished, unless it be clearly and legally proved that he has wilfully infringed the laws of his country.

"Should, then, the judge holding the fate of the party implicated and the very bonds of social order in a balance, perplex himself with extraneous duties, which must divide his attention, and often disturb his equanimity? Should the judge, especially when the prisoner is defended by counsel, voluntarily add to his serious functions the unseemly and clashing duties of counsel for the prosecution? He sits in the queen's seat, to do justice between the accused and the laws of the country which are alleged to have been broken. Filling such a post, is it becoming in him apparently to act rigorously on one side, and that side the weakest? Is it decent, in such a case, for the judge to attempt the performance of such anomalous duties?"

"Many of our most enlightened judges have strongly censured the practice."

So they have. Mr. Justice Cresswell called it "improper," and Mr. Justice Maule was shocked at its "indecentcy." "I will not act in that capacity," said Mr. Justice Coleridge.

"And yet," says the author of this pamphlet, "in utter heedlessness of the above eminent judges' indignant refusal to be prosecuting counsel and judges, the unseemly and perplexing duty is unhesitatingly done by certain chairmen at quarter sessions. This double duty, which is trebly reprehensible, is generally performed with complacent avidity by the sessions judge, who happens to be a hungry old barrister, that has elbowed himself into the chair. It is somewhat remarkable, but nevertheless an often observed fact, that effete, superannuated officials of this description are the most inveterate enemies which the junior members of the bar have; their stunted faculties and narrow, crafty intellect appear to be always on the stretch to cut in upon the profession to which they owe everything; hence a reason for their prosecuting as well as trying.

"The fiction of the law, that the judge is counsel for the prisoner, if it be not altogether a delusive fiction, surely ought to have as much influence at quarter sessions as it has at the assizes. Be it, however, fiction or fact, the judge has long been held theoretically to take care of the prisoner. In Algernon Sydney's case, the detestable old Jefferies told him, 'that the court is bound by their oath and duty of their places that they shall not see any wrong done you.' Even that execrable judge admitted the principle. But how can a judge be acting in conformity to his theoretical duty when he is eliciting evidence directly against a prisoner?"

"In a note in page 466, vol. 5, of the 'State Trials,' it is said, that a culprit, when he heard his judge, presently after saying that he was counsel for the prisoner, put to a witness a question directly tending to elicit proof of his guilt, cried out, 'Alas! my lord, if you were my counsel you would not ask that question!' Every prisoner who is judge-prosecuted may fairly and reasonably utter a like exclamation. But why do some countryfied judges persist in following a course which is alike condemned by many judges of the land and by common sense? Phædrus says,"——

Never mind what Phædrus says. The author who is a wiser man, says of the practice very truly, that—"Such self-sufficient arrogance, evinced in ordinary affairs, would be simply ridiculous; but when it is ostentatiously exercised on the judgment-seat, it deserves reprehension, because it encroaches on a custom which time has rendered venerable, and occasions a British court of justice to exhibit the suspicious anomaly of a judge's doing two conflicting things at the same time—judging and prosecuting."

It is quite true that it ought not to be done; still we must bear in mind that it is usually, we may say exclusively, in very easy and simple cases that the judge, or chairman, ever does act as counsel. What, inquires our pamphleteer, can be their motive? "Can it be attributed to public economy?" Just so; that is precisely what it is to be attributed to. An unwise economy certainly, but still done with that view. Their conduct elicits the following indignant reproof from their censor.

"The magistrates, who at present are invested with the irresponsible power of taxing the county and spending the money, very often display fits of the meanest niggardliness and unaccountable extravagance. At one time they inquire most strictly for the reason why two guineas have been allowed for one brief, and only one guinea for another, cutting off shillings here and sixpences there; and at the same sitting, with the utmost *nonchalance*, involve the county in forty or fifty thousand pounds expense on some whimsical gaol improvement, or crack-brained amelioration of criminals. They thus squander away enormous sums, and at the same time are exceedingly stingy upon candle-tops and saving on cheese-parings. This evil arises from the unjust law which invests the same parties with the uncontrolled power of taxing others and of spending the money. A remedy would be obtained by giving the payers of county taxes an exercise of the right which justly belongs to them,—to superintend, or, at all events, to have a voice in the expenditure of their own money. If, however, saving expense be the cause of the practice, who gets the benefit? Prosecutions now cost the county little or nothing."

This is news indeed. Whence does our anonymous friend derive this somewhat startling fact, that prosecutions cost us

little or nothing? He has somewhat grand notions apparently of "little or nothing." But suppose it be so, and that his suggestion be adopted, of giving the county rate payers "a voice in the expenditure of their own money;" does the author really persuade himself that, if this were done, the ratepayers would expend their guineas on him and his brethren at the Bar? They would be infinitely more likely to withhold what is given, than to give more. That plan would never do. The only thing to be done is to exhibit the evil by every means; and appeal (in somewhat more courteous and in milder terms than in this pamphlet) to the justice and good sense of the chairmen and magistrates, who now adopt these objectionable courses.

There are other evils of a far greater magnitude, to one of which this pamphlet directs attention, thus :

"It must be obvious, that chairmen at quarter sessions should establish some general rules for the practice in their courts, and, having adopted them, that they should in every case impartially act upon them. As matters are managed at present, a chairman may preside in one court who declines to act as prosecuting counsel when a prisoner is defended; whilst the chairman who rules in the other court, being a man-of-all-work, does the whole himself. Sometimes chairmen, who refuse to perform double duty, direct that the county briefs should be given to counsel in rotation; one, however, begins with the senior, and another with the junior; a third may direct them to be confined to members of a clique. But even in this distribution of small professional patronage, above denominated the Soup System, trickery, very nearly akin to knavery, is often displayed. When the brief by rotation would come to some marked member of the bar, the chairman-of-all-work has been known to change places with his more squeamish brother chairman, so that he may prosecute as well as try, in order that the marked man may not get the paltry trifle. A sessions judge has been known to send the messenger of the court in search of a favourite barrister, for the purpose of giving him the county brief or depositions, instead of handing it to a less popular one, to whom, according to their rule, it apparently belonged. Such change of place for such purpose, and such partiality, are mere shuffles to trick the marked men out of their guinea. The dodge may gratify mean spite and grovelling vindictiveness, but it sadly disgraces the judgment-seat; it naturally raises comparisons between the small thief at the bar and the judge on the bench, which must be disparaging to the latter. It is quite manifest, that a severe lecture on the enormity of stealing a pocket of apples, or a pennyworth of half-rotten straw, would be likely to be equally effective, if the sternly moral judge would just refrain from tricking troublesome counsel and others out of what rightfully belongs to them. Be it remembered, that the trifling fee, even the smallest fraction of it, does not belong

to the session Solon; if it did, no counsel would be sufficiently mean to touch it; the judge, therefore, in the cases mentioned, exactly personifies the dog in the manger,—barring the dog's nobler nature."

We neither like the practices thus denounced, nor the spirit or terms of the denunciation. The one is paltry and wrong, and the other virulent and abusive, losing its weight by having all the appearance of being written by an angry man smarting under the annoyance he describes. We wish that a writer of so much ability, having the advantage of so clear an abuse to assail, had done it with effective and becoming temper, and given the profession and the public the full benefit of just and temperate censure, on practices really deserving of it. It seems foolishly trite to say that no good cause gains by virulence; but really the constant instances in which this truth is forgotten by good men who ought to know better, is a proof that it requires to be constantly and repeatedly inculcated. If there be any case in which this lesson and rule ought to be more scrupulously observed than another, it is when a man writes anonymously. It does not quite lie in the mouth of a gentleman who, secure in incognito, pelts stones in the dark, to talk of the superior nobility of a dog's nature to that of the object of his very safe attack.

Having now said what we deem to be due to ourselves in regard to the style and tone of a pamphlet thus conspicuously noticed in our pages, let us briefly comment on the growing necessity that judges and chairmen of quarter sessions should be respectfully told of the very grave dissatisfaction which some practices (happily by no means universal among them) have occasioned.

The gravest of all charges which can well be advanced against any judge is clearly that of partiality in the exercise of any part of his judicial power. For a judge to exercise the slightest control over the distribution of briefs, except such as are handed down—and which in light cases should be invariably given to the junior, and in heavy cases to the senior, member of the bar present—is very objectionable. But acting magistrates in their respective districts are, we think, bound to do more than merely abstain from acts of favouritism: *they should prevent them.*

It is now very generally the case with the clerks to magistrates to select one or two favoured members of the bar to whom they exclusively confine their briefs. The most unworthy means are consequently adopted by barristers themselves to procure this bounty; and the instances are unhappily by no means rare where the magistrates tout for briefs, and exercise the whole of their influence for their protégés. The result is that shoals of

briefs are poured into the hands of two or three men who are the most adroit and successful in gaining the favour of the magistrates : and a system of toadying magistrates and hugging attorneys is now carried on which has, and cannot but have, a disastrous effect, in lowering the character of the profession and fostering the growth and prosperity of its most unworthy members, to the utter sacrifice of those who have too much self-respect to stoop to similar meannesses, and whose superiority thus operates as an almost certain drawback, if not as a fatal impediment to their success.

One of the great uses of the sessions bar is to form a nursery in advocacy for junior barristers ; and were business fairly distributed among them, the advantages to the public, as well as the profession, of such a preparation and training, are manifest. Instead of this, the sessions courts have very generally become a preserve for the exclusive benefit, not of the younger and deserving members of the bar, but of a small clique of middling lawyers and accomplished tricksters, who make so good a harvest by their monopoly as often to cling to it for the rest of their lives, and in nearly all cases long after the period at which abler and worthier men abandon the lower for the higher ranks of their vocation.

Mediocrity and meanness thus obtain a virtual premium, and a permanent pension ; not only often to the sacrifice of gentlemen and more promising lawyers, but to the great detriment of public business ; for the same favouritism, which obtains briefs for the hugging counsel without the court, frequently aids them within.

It is an obvious advantage to a barrister, especially at a heavy sessions, where the attorneys are all anxious and pressing to get their business over, to obtain precedence for their cases. This the favouritism of the court, where it exists, enables them to do ; and one of the many means whereby the favoured few succeed is by the unjust preference which enables them to take their three or four cases into each arraignment, whilst a junior, or non-favoured man, in vain struggles to get his single case (if he be fortunate enough to have one) in at all. A detriment to the public thus arises. At all large sessions there are two courts. The three or four men who alone holds four-fifths of the briefs, can by no possibility attend to them all. They are urged to do so ; and strive to oblige the best and most pressing of their clients ; the result is that they retain their briefs to the last in their own hands, and when two of their cases are necessarily on at once, they fling the brief in one of them over to some unemployed man at their side (taking especial care to

avoid the most able or promising men, for fear they shall display their abilities), and the case is conducted on the spur of the moment by a man who knows nothing about it. We have heard of a recent instance, where one of these favoured gentry had two of his cases going on together for three-fourths of a day at a large sessions; one-third only conducted by himself.

We are satisfied that the intelligence and good sense so widely prevailing among the magistracy, will assent to the view we hope we have not intemperately expressed of the injury and injustice done by the present system of favouring monopolies in the hands of a small clique of men at each sessions and assizes, but especially at the former; and that they will see the expediency, not merely of refraining from favouritism, but do their best to abate it, by requiring, at least, their own clerks to distribute their prosecution briefs fairly among the regular attendants among the Bar. Of course the more difficult cases will be naturally and properly given to the most experienced counsel; but the very fact of their greater experience is immense odds in their favour, and alone ensures them a preponderance of business. This puts in a still stronger light the injustice to others of giving them additional and antagonistic advantages.

We quite accord with the wish above cited that there were better regulations for the conduct of business in the courts, so as to check the undue precedence given to the cases of favoured men. This is much needed were it only to prevent the unseemly wrangle, which in the absence of any such rules often takes place among the counsel themselves.

Assuredly the great body of the barristers who practise at sessions courts have a strong claim on the interference and change of system by the magistracy. Not one out of a thousand will give utterance to his sense of wrong in the manner of the pamphlet before us, but it is no exaggeration to say, that numbers of deserving men are yearly driven from their profession, who would have adorned it, with hopes and prospects utterly crushed by the organized machinery of injustice we have but partially described, and which they are powerless to withstand. It is too well fortified to be shaken by anything short of the resolute determination of the magistrates themselves to put it down.

We once designed to expose far graver abuses made, and unfortunately but too well attested, against certain judicial persons who, some from intimidation and others from motives of personal prejudice, favour their tormentors or spite the objects of their dislike. We have heard of well attested cases, where both these

outrageous abuses have been exhibited; in the latter category, even so as to jeopardize the life of a prisoner, defended on a capital charge, by the object of his prejudice, before one of these mis-called judges. We feel, however, a reflection that such instances of pitiful pusillanimity, and outrageous paltriness of mind and character, are and must be so thoroughly exceptional, that we could hardly, with justice to the noble judges who characterize and adorn our bench, or to the general character of the high-minded gentlemen who discharge judicial functions among the magistracy, make these rare delinquencies the subject of general comment. It would be a libel on the prevailing integrity and honour of our judges, both major and minor, to do so. We could alone avoid such a gross injustice, by pillorying the offenders *by name*.

ART. XII.—LAW OF PARTNERSHIP.

REPORT of the Select Committee of the House of Commons on the Law of Partnership, ordered to be printed 8th July, 1851 (509).

PARTNERSHIP EN COMMANDITE: or Partnership with limited Liability, for the Employment of Capital, the Circulation of Wages, and the Revival of our Home and Colonial Trade. Effingham Wilson, 1848.

IN the last number of the Magazine (*ante*, p. 50), we endeavoured to show that under the existing law of England an arrangement might be entered into by which, in effect, a person advancing capital to a trading concern might obtain a rate of interest proportioned to the trading profits of the concern: he postponing all right to repayment of the capital advanced by him until all other creditors should be satisfied. And we based this on the conclusion that the arrangement we there proposed constituted, in fact, not a contract of partnership, but a contract of debt. In the Report before us the Committee recommend (*Report*, p. viii.)

“That power be given to lend money for periods not less than twelve months, at a rate of interest varying with the rate of profits in the business in which such money may be employed, the claim for repayment of such loans being postponed to that of all other creditors. That in such case the lender should not be liable beyond the sum advanced, and that proper and adequate regulations be laid down to prevent fraud.”

Or, in other words, it is now recommended and proposed to legalize effectively the precise arrangement which we recommended, and proved to be already legal in our last number. Now, though we do not go back from one foot of the ground we there occupied, yet we are ready to admit that the point is, on the decisions, so obscure and unsettled, that a legislative enactment on the subject seems highly desirable. Nothing is so timid as capital: and it would be vain to expect ready or general action on the authority of less than an act of parliament. This, however, is a boon which does not seem likely to be speedily granted: and, in the meantime, it may be useful to state with some accuracy the nature of the various contracts under which trading is permitted in neighbouring states.¹

The Code de Commerce of France, regulates, either expressly or by reference and analogy, contracts in France, Holland, Belgium, and parts at least of some other countries. It recognizes three sorts of partnership:

(Code de Commerce, b. 1, tit. iii. § 19, et seq.)

1. Partnership *en nom collectif*, which answers to our ordinary partnership; each partner being liable for the whole of the partnership debts.

2. Partnership *en commandite*.

3. Anonymous partnerships (*société anonyme*). This third class almost exactly answers, as to the responsibility of the members, to our chartered companies and companies under private acts of parliament.

The regulations of the *Société en commandite* are not many nor long, and we shall translate them. (Code de Comm. ubi supra, § 23, et seq.)

"23. A partnership *en commandite* may be formed between one or more partners generally liable for the whole engagements of the concern (*responsables et solidaires*), and one or more partners simply advancing capital (*simples bailleurs de fonds*), who are called *commanditaires*, or partners *en commandite*.

"Such a partnership is carried on under a partnership name, which must necessarily be that of one or more of the partners generally liable for all engagements.

¹ A comparative view, such as is here attempted, might have been expected in the Appendix to the Report of the Select Committee, but it contains no such statement, though valuable evidence is given by Mr. Phillimore, Mr. Lieber and Mr. Bancroft Davis. The legal part of the work "*Partnership en Commandite*" is not to be implicitly depended on: the author, a layman, seems to have been misled by following authorities, upon whose accuracy little or no reliance is placed by the profession. Collyer and Story scarcely do more than allude to the names of the various contracts known to the laws of other nations.

"24. If there are several partners generally liable and named (*solidaires et en nom*), whether they all carry on the concern (*gèrent*) together, or whether one or more carry it on for the whole, the partnership is at the same time a general partnership *en nom collectif* as regards these, and partnership *en commandite* as regards those who have merely advanced capital.

"25. The name of a partner *commanditaire* cannot be introduced into the style of the firm.

"26. The partner *commanditaire* participates in the losses to the extent only of the funds which he has placed, or has bound himself to place, in the concern.

"27. He cannot take any part in the management (*faire aucun acte de gestion*), nor be employed for the purpose of the business of the partnership, not even as proxy, agent or attorney (*même en vertu de procuration*)." — [N.B. If a *commanditaire* reserve to himself the right to administer the cash of the partnership, and to inspect the accounts, with a mutual check (*surveillance*) by each partner on the other, the partnership becomes a general partnership.]

"28. In case of infraction of the last article, the partner *en commandite* becomes generally liable (*solidaire*).

"38. The capital of partnerships *en commandite* may be divided into shares, without derogating in any other respect from the regulations established for this description of partnership.

"39. Ordinary partnerships (*en nom collectif*), and partnerships *en commandite*, must be notified by public or private instruments (*actes publics ou sous signature privée*), conformably, in the last instance, with the Code Civil, Art. 1925.

"42. An abstract of the instrument of partnership, whether ordinary or *en commandite*, must be deposited within fifteen days from their execution, at the office of the tribunal of commerce of the district (*arrondissement*) in which the place of business of the concern is, in order to be transcribed on the register and hung up for three months in the court house (*salle des audiences*).

"If the partnership have several places of business, situated in different districts, the deposit, transcript and hanging up must be made in every such district."

These formalities must be observed on pain of avoiding the whole transaction as far as the parties interested are concerned, but the partners cannot take advantage of any such neglect as regards third parties.

"44. The abstract must contain the names, christian names, addresses and additions of the other partners than those *en commandite*.

"The style or firm of the partnership must point out those of the partners who are authorized to manage (*gérer*), administer and sign for the firm.

"The amount of the funds (*valeurs*) advanced or to be advanced *en commandite*.

"The date of the commencement and of the termination of the partnership.

"The abstract of the partnership deed is to be signed by the managing partners, or those generally liable (*par les associés solidaires ou gérans*).

In addition to the three species of partnership above mentioned, the code recognizes a fourth species, viz. *associations commerciales en participations*, the peculiarities, if any, of which seem somewhat vague and undefined. They do not seem to have any limitation of liability; they are not called upon to register their deed of partnership or arrangement; and it seems that their peculiar rights and obligations, whatever may be their nature, are only enforceable as between the contracting parties themselves. They seem to be very much resembling our limited or special partnerships, arrangements entered into for carrying out particular objects or particular transactions, but which are in fact, as to third parties, within the scope of the transactions, ordinary copartnerships, whatever may be the rights of the contracting parties between themselves.

Of these four descriptions of partnership contract, therefore, known to the French law, there is only one, viz. the partnership *en commandite*, which does not find an antitype amongst ourselves. The other three descriptions bear so close a practical analogy to contracts in use amongst ourselves as to render it hardly worth while to contemplate their introduction here, or even to analyze their differences, or weigh their respective merits very closely. Every change, so far as it is a mere change, is in itself an evil; it may introduce some principle, the development of which may be so advantageous as infinitely to outweigh the evil of alteration; but so far as any alteration unsettles existing notions, and renders useless knowledge already acquired, and calculations already entered into, it is no doubt an evil. In three of the four cases, viz. the first and the two last, we think the differences between the French law and our own (even assuming the French to be superior) are not sufficient to justify any change. But with the second species, viz. partnerships *en commandite*, the case is extremely different.

Passing from France to the United States of North America, the revised statutes of Massachusetts passed, in a codified form (1835), provide in a business-like way, almost as if one were writing a letter, for the regulation of partnerships. Three descriptions of trading partnership are recognized. 1. The ordinary partnership as known to the common law of England, and of which we shall have nothing more to say. 2. Limited partnerships, answering nearly to partnerships *en commandite* of

the French code; and, 3, manufacturing corporations; answering in some respects to the *sociétés anonymes* of the French Code, and in some respects also to our joint stock and chartered companies, and companies under private acts of parliament, but with important differences. Banks, insurance companies, turnpike, railroad, canal and waterworks companies, and companies for one or two other purposes not properly speaking trading purposes (as public libraries, &c.), are regulated by separate statutes, and are not included in the term, "manufacturing corporations." Manufacturing corporations may be established within the state apparently for carrying on any kind of manufacture¹ or trade, by merely filing a certificate of the amount of the capital stock, when the whole is paid up. We presume the certificate must necessarily (although not expressly so stated in the statute), express the name or style of the company, the date, and the place of business; for it is to be recorded at the registry office of the county in which the corporation is established. *Until the whole of the capital stock is paid up, and the certificate above described registered, every stockholder is liable without limitation*, as in the case of an ordinary partnership. On the registration of the certificate, the general body of stockholders acquires the same security as in a railway company here; with one or two exceptions, *e. g.* if the whole amount of paid-up capital and debts of the concern be not registered every year in like manner as was required of the original certificate, every stockholder becomes again subjected to unlimited liability until such a statement of accounts be duly registered. These simple but ingenious enactments certainly seem adapted to secure *bonâ fides* and activity in the management of the concern. And a similar penalty, *viz.* personal unlimited liability, is held out, in order to ensure the proper action of the directors. Thus, if the whole amount of the debts which the company owes at any time exceed the amount of paid-up capital, every director is personally liable for the whole excess. So every officer who assents to a loan being made from the company to a stockholder, becomes personally liable for the amount. Every director who declares

¹ We suppose this would include any sort of trade or business, but it is not so stated. The want of interpretation clauses is we think generally felt throughout these statutes. It is unsatisfactory to be driven to Bardolph's difficulty—"I know not the phrase, but I will maintain it to be a word of exceeding good command. Accommodated,—that is, when a man is, as they say, accommodated; or when a man is,—being,—whereby he may be thought to be accommodated; which is an excellent thing." This same chapter speaks sometimes of manufacturing companies, at other times of manufacturing corporations, which might mean two different things; but if the same thing be meant, why use different words?

and pays a dividend, when the company is insolvent, or which would make the company insolvent, becomes individually liable for the whole amount of the debts of the company. Every officer signing or joining in any certificate which he knows to be false, becomes personally liable for all the debts of the company. Every stockholder who receives back any of his calls while any debt is owing by the company, becomes personally liable for the whole. It would be extremely proper to embody similar arrangements in our joint stock companies law when it shall please the legislature to arrange and consolidate, or rather to repeal and provide some substitute for the mass of contradictory impossibilities which we owe to the legislatures of the last eight years. As far as our experience goes, all parties, the general public, the professional men, and the officials connected with the working of the Joint Stock Companies Acts, feel that it is at once desirable and inevitable that the limitation of liability, now strictly reserved to chartered companies and parliamentary companies, should in some way, and under some safeguards, be extended to joint stock companies generally, within the meaning of the 7 & 8 Vict. c. 110. The provisions which we have just alluded to in the Massachusetts statutes seem thoroughly adapted to secure the great end which should be at once the reward and the motive for limited liability, viz. the honesty of management, and the substantial reality of the concern.

With regard to the other class of partnerships which more nearly correspond to those whose nature we are endeavouring to trace, (viz.) partnerships *en commandite*, the law of Massachusetts (p. 304, *et seq.*) permits the establishment of trading concerns exactly analogous to them as far as the liabilities of the persons interested are concerned, and differing from partnerships *en commandite* of the French Code solely in the manner and terms upon which they may be established. They are styled "limited partnerships," and may be established (in larger words than were used in speaking of manufacturing companies or corporations) for the transaction of mercantile, mechanical or commercial business within the state. The terms used to express the *commanditaires* is "special partners:" the "*associés responsables et solidaires*" are termed "general partners." As in the French law there must be one or more *gérants* or managers, each of whom must be a general partner. As in the French law, too, the style of the concern is to include the name of one or more of the general partners only: no special partner must allow his name to be there: and if there be but one general partner he is not to add the words "& Co." But previously to the esta-

blishment of the concern, a certificate must be duly registered, in which not only the names, &c. of the general partners, as in the French Code, must be set forth, but also the names, &c. of the special partners, and the amounts for which they respectively have subscribed. This amount must be fully paid up in actual cash to the concern. The nature of the business, and the date and duration of the partnership, must also be set forth; and in case of any false statement being contained in it, the whole of the partners, special and general, are made generally liable to all the engagements of the concern as ordinary partners. This is very different from the French Code, which is satisfied with the undertaking on the part of the *commanditaire* to provide his share of the funds, and does not require actual cash to be paid down, and carefully conceals from the public the *commanditaires*: a concealment which may be perhaps an unconscious relic of the old prejudices referred to by Mr. Phillimore in the evidence before the committee, Q. 7, "The church prohibited money being put out at usury: the prejudices of the noblesse looked on commerce as a degradation: therefore the original law of *commandite* in France was entire secrecy as to the persons who did not manage the affairs." The actual law in France seems an accommodation between the entire secrecy of the old French law and the public registry of the United States: all the partners execute the deed of partnership, but only the active partners are recorded in the Tribunal de Commerce.

The Massachussets statute not only requires the registry of the certificate or statement containing the particulars above mentioned, but also that it should be acknowledged by all the partners before a justice of the peace of the county, and should be advertized for six successive weeks in some newspaper published there. The special partner, conforming to the regulations of the statute, is liable only to the extent for which he may have subscribed, and also for all sums withdrawn by him from the concern (*semble*, by way of dividends, &c.), together with interest thereon from the time of withdrawal of such sums.

The New York statutes contain similar provisions as to partnerships *en commandite*, very nearly in the same words as the Massachussets statutes. At New York an affidavit is in addition required to be made by one of the general partners, to the effect that the sums expressed to be advanced by the special partners have actually been paid in cash. The special partner is not liable in the case of eventual insolvency to repay any interest he may have received on his capital advanced, nor any dividends received, so long as the payment of such interest and dividends shall have been made without reducing the capital

stock: but for any interest or dividends paid out of capital stock he is at any time liable to be called upon. This seems to be exactly the same as what the Massachusetts legislature intended, but the intention is not there so clearly expressed.

There is, however, one very important article in the New York Code which is not in that of the neighbouring state, viz., that a special partner may from time to time examine into the state and progress of the partnership concern, and may advise as to their management; but he shall not transact any business on account of the partnership, nor be employed for that purpose as agent, attorney or otherwise. This appears to be a dangerous power. It is difficult to say when "advice" ceases, and overbearing commences; it is difficult, as we have lately seen in the strike of the amalgamated engineers, to know exactly what force to attribute to "advice," when the adviser threatens to dislocate the concern if his counsel be not adopted. The New York statutes in this respect go beyond any other code with which we have met. The French *Code de Commerce*, as we have seen, has had a contrary construction put upon its provisions.¹ The partner *en commandite* who chooses to reserve to himself such powers, is held liable as a "solidaire."²

With regard to incorporated companies, the New York Statutes, pt. i. ch. xviii. tit. iii. § 5, provide that where the whole capital of a corporation shall not have been paid in, and the portion paid shall be insufficient to meet the demands, each stockholder shall be liable to pay in the amount of his share remaining unpaid. In respect of these companies, therefore, the rule which is so strictly laid down for limited partnerships, that the whole amount of each special partner's share must be paid in cash before the concern can start, does not apply any more than the other of the simple, but vigorous, provisions of the Massachusetts statutes.

The most recent civil code for Louisiana, to which we have had access, is the edition of 1838. No code of commerce had then been enacted, although it was contemplated (Civil Code, art. 2798, and note). The subject of joint stock companies, or of trading companies analogous to our joint stock companies and chartered and parliamentary companies, is in the Civil Code of Louisiana left entirely untouched. But partnerships *en commandite* are carefully treated of; and the provisions are somewhat different both from the New York and Massachusetts and also from the French system. As in the French system, the partner *en commandite* may either advance his share of the capital in cash, or merely undertake to advance the amount; his

¹ Note, ante, p. 257.

² Revised Statutes, New York, part ii. chap. iv. tit. (1).

share may be advanced also either in goods, money or otherwise. On the other hand, the names of the *commanditaires* are not, as in France, allowed to repose unknown to all save their partners; they must be all named in the contract, and deposited in a public office, open to public inspection. The partner *en commandite* cannot be called upon by the partnership or its creditors to refund any dividend he may have received of net profits fairly made during the solvency of the partners and *bonâ fide* at a time stipulated in the articles. But on the other hand, he cannot interfere, apparently even by his advice, in the management of the concern.

We have thus given a short review of the provisions affecting contracts of this nature, as they are found in various systems based on independent and even antagonistic originals: the Code of Louisiana being, as we are informed in the dedication to Judge Martin, founded on the Roman civil law; the revised statutes of the New England states being based on our own common and statute law; and the *Code de Commerce* of France, distinct in its origin and tendencies, though, doubtless, swayed by frequent analogies to the Roman civil law. This, indeed, is the case even with our own common law, indigenous as we are apt to think it.

Against all these systems, and in dogged opposition to each, stands our present law. At the present day, when, notwithstanding the uncertainty of the journey across a hemisphere of waters, or the caprice of democracy or despotism, our capital is exploring the mines of Geelong or Mariposa with the one hand, and with the other erecting railroads on the Mississippi or on the Neva: when the competition of ingenuity and the multitude of skilled artisans is such, that our engineers and mechanics and manufacturers are establishing themselves and their industry and skill in every country of the world: we still govern, or rather hamper, our commercial capabilities by the rules which were felt to be strict when an English government negotiated loans in Antwerp or Genoa, and when the rudeness of our native ignorance was first tutored into the production of manufactures by foreigners flying from the religious persecutions of France and Spain. Further, with perverted ingenuity we put forward our altered position as a reason for retaining laws which certainly, at their institution, never were established with the remotest contemplation of the condition in which we now find ourselves. It is a rare instance of wisdom if a law be perfectly adapted to the circumstances in which it was intended to be enforced: it is sheer good fortune if a law intended for one set of circumstances be found to suit admirably under completely altered circum-

stances : but it is incredible that a law should command our approbation on account of its peculiar fitness to two states of things which are in themselves exactly contradictory. If the law of unlimited liability, the condemnation of joint stock companies as nuisances, the absolute prohibition of any contract resembling partnerships *en commandite*, were, in times of comparative ignorance and scanty communication, useful to prevent impositions and deceit : if these regulations tended, when commercial credit was low, to excite industry and attract credit to skill—the same arguments cannot be admitted to justify these restrictions in the present day, when capital and skill are redundant, and the means of communication and investigation are so ready and so sure. Yet this is the two-edged sword which the opponents of limited liability attempt to wield. The extreme rapidity with which the opposite cuts are attempted to be given are well exemplified in Questions 598 and 599 in the Minutes of Evidence before the Select Committee. One witness, an ex-governor of the Bank of England, having given a decided opinion against limited liabilities of all descriptions (and he was the only witness examined who was not altogether in favour of a change), the Chairman inquired (Q. 598) :

“ Q. If therefore it should be proved that such corporations for local enterprises and local investments have worked successfully in any of the towns in the North American States, you would think that that was owing to some essential difference probably between that country and this ? ” “ A. I think it is very probable that in a small town where people are all known one to another, there might be an advantage in those little corporations which would not exist in England, nor do I think it is likely that the same frauds would be practised there by people setting up a variety of schemes to induce parties to contribute their portions of capital, which I fear would result from the establishment of small corporations all over England.”

The witness had just previously stated his chief objections to be, that the existence of these partnerships led to habits of fraud and recklessness (Q. 576, 578, 586). Logically, therefore, this is not the answer that might have been anticipated, viz. that this witness would expect fewer frauds to be practised in America, where such arrangements abound, than here, where we have not yet had an opportunity of acquiring the habits of fraud and recklessness they tend to encourage. However, letting that pass, the answer clearly conveys an impression that the witness thought such partnerships might be useful in small towns, but mischievous in large towns. And this seems to have been the impression conveyed to the chairman : for he instantly pursues the inquiry (Q. 599) :

"If such towns should turn out to be New York and Boston, with 300,000 people in the one, and 150,000 in the other, and that system works well there, you would probably be surprised?" "I should not be surprised; I do not think they would work so badly in our large towns here as they would in our smaller towns. It is in our smaller towns that the greatest frauds would be practised."

The chairman asked no more questions of that witness. This answer stopped him; and well it might. For the first answer says in effect, "I am of opinion that fraud is *less* likely to occur in small places than in large places, and, therefore, I think the system less improper for *small* towns;" and in the very next breath, "I am of opinion that fraud is *more* likely to occur in small places than in large places, and, therefore, I think the system less improper for *large* places. I have always said so. I am not in the least surprised."

Who ever "turned his back upon himself" with such unconscious facility? One of these two opinions,—one of these two deductions must be erroneous. But we would make so bold as to differ from both conclusions, so far as they assume that a system of limited liability is improper at all, either for small communities or great. Not to attempt to balance the advantages in each case, we are convinced that in every stage of progress, whether labour be scarce and capital plentiful, or vice versa, or whether, as is at present the case here, skill and labour and capital all abound; an arrangement, by which (to use Mr. Fane's words) labour may be married to capital, must be wholly advantageous to the community. "At present," says Mr. Fane, "the law absolutely forbids the banns;" or rather, in the present state of the law, industry and capital, like many another couple, are afraid to come together for fear of consequences.

The principal objection insisted upon by the witness, whose evidence we have just quoted, and which seemed to cling to the minds of some of the committee-men throughout great part of the examination, was, that by permitting a participation in profits, without incurring more than a fixed liability, such a spur would be given to speculators of every description, that they would cover the country with a network of frauds. This fear, we take it, is purely imaginary. The great body of the evidence went exactly the other way, and showed that, although some encouragement might be given to exaggeration in some respects, yet on the whole the introduction of a system of limited liability would tend to lessen frauds, especially if it took place in conjunction with some increased stringency of the bankruptcy law upon fraudulent or reckless traders; or even with the present law, the working of which appeared on all hands to give great

satisfaction, and to be growing gradually more adequate to the punishment of fraudulent bankrupts. Under a system of limited liability, an inventor, knowing that he has a prospect of obtaining assistance from capitalists, who under the present system would not admit his scheme to a hearing, will be less likely to make reckless over-statements; and a much more serious and scandalous species of fraud than the sanguine exaggerations of struggling inventors would in all probability receive its death blow. We allude to the false and shamefully-facile credit which is so readily afforded to joint-stock companies under the present system, and which, provided they have a strong list of shareholders, enables them, in the midst of really adverse circumstances, to carry on with all the appearance of prosperity, until a ruinous crash takes place. Mr. Field's evidence (*Minutes*, p. 145) is very clear on this point.

The great loss to the community from the present law, as is well shown in the work on *Partnership en Commandite* at the head of this article, arises from the idleness and sterility to which by its threats it condemns capital on the one hand and invention on the other. No man probably in this country, except a maniac here and there, hoards, in the literal sense of the word; the most miserly man invests his money on some sort of security; and he does well. It is better for the community than that it should remain idle: it comes mediately or immediately into the hands of some person who employs it actively in order to make a profit. The only way in which this can be done is by investing it in wages, or in manufactures, the product of wages. It is of no difference whether A. pays his own workmen or buys goods of B.: out of that price B. will have to pay his workmen. And, as the author of the work already referred to shows, the circulation of money by means of wages is the great and prolific source of public wealth. It is shown that labour never can be unproductive, though some kinds are of course less profitable than others. That system, therefore, is the best which applies capital to labour in the form of wages in the most direct way, and applies capital to the most profitable description of labour. The remedy is to be found, as the author above named insists, in a re-adjustment of the partnership law; or rather, as we maintain, in an enactment that the arrangement described and explained in our last Number should be declared to be not a contract of partnership, but a contract of debt.

Our limits forbid more at present, but we shall recur to this interesting subject.

B.

Notes of Leading Cases.

EQUITY.

JURISDICTION IN AID OF AN ECCLESIASTICAL COURT—A FRAUDULENT CONVEYANCE, EXECUTED TO DEFEAT A SUBSEQUENT SEQUESTRATION, SET ASIDE IN EQUITY.

Blenkinsop v. Blenkinsop, 12 Beav. 568.

It is an old maxim that a court of equity should lend its aid to enforce the judgments of courts of ordinary jurisdiction. Lord Redesdale says: "Courts of equity will lend their aid to enforce the judgments of courts of ordinary jurisdiction, and, therefore, a bill may be brought to obtain the execution or the benefit of an elegit, or a *fiery facias*, when defeated by a prior title, either fraudulent or not, extending to the whole interest of the debtor in the property upon which the judgment is proposed to be executed." (Mitford's Pl. 126.) Lord Hardwicke extended this principle to the case of the king in council: "I will not hold the jurisdiction of the king in council to be of such a nature as to be below the being aided by this court to give relief to come at discovery; as it must be determined in some court, the plaintiff is entitled to come here to have that discovery." (*Earl of Derby v. Duke of Athol*, 1 Ves. sen. 205.)

In *Blenkinsop v. Blenkinsop* this maxim received a new application. In 1842 a husband, pending proceedings against him in the Ecclesiastical Court for a divorce, executed a voluntary settlement of real and personal estate. Sequestration afterwards issued against him, which was defeated by the deed. His wife, the plaintiff, being unable to make any of his property available under the process, filed her bill, praying that it might be declared that the deed was fraudulent and void as against her, and that it might be delivered up to be cancelled. The deed was clearly fraudulent, having been executed avowedly for the purpose of defeating the plaintiff's right in the event of its being established. The court in which the right was established had no jurisdiction to remove the obstacle created by the fraudulent act of the defendant, or to lay hold of the beneficial interest re-

maining in him, and the question was, would equity interfere to aid it by setting the deed aside?

Lord Langdale, M. R., said it was no new law to exercise the authority of a court of equity to prevent fraud, or to relieve from the effect of fraud, or to give assistance to enforce the judgments, decrees or sentences of other courts of competent and lawful civil jurisdiction, when the execution of such judgments, decrees or sentences was defeated or obstructed by fraudulent contrivances, or where an adverse title, attempted to be created for the purpose of defeating such judgments or sentences, did not extend to the whole interest of the debtor in the property upon which the judgment was proposed to be executed. And although, in the case before him, the deed was executed before any right was declared, or any order for payment of money was made, yet, being executed for the purpose of defeating the right which the defendant knew the plaintiff was entitled to establish, his lordship thought it must be considered to have been executed with the view of defrauding her, and that to permit it to have effect as against her, and as to any right and interest not founded upon valuable consideration, would be to give effect to that fraud. "My opinion," concluded his lordship, "is not founded upon any notion of lien which the suit in the ecclesiastical court, or before the judicial committee, gave to the plaintiff upon the property, but upon this: that the plaintiff having established her right, and it appearing by the writ of sequestration that she is entitled to be paid out of the defendant's real and personal estate, and that she cannot have the benefit to which she is entitled by reason of a fraudulent act of the defendant, committed avowedly for the purpose of defeating the right now established, and the court in which the right is established having no jurisdiction to remove the obstacle which the defendant's fraud has created, or to lay hold of the beneficial interest which remains in the defendant, and it being within the jurisdiction and duty of this court to lend its aid in such a case, I think the plaintiff is entitled to some relief. But I do not think that relief to which she is entitled can extend to defeat the interests of the defendants who are *bonâ fide* creditors, payment of whose debts was provided for by the deed, and which are not yet paid."

It was, therefore, declared that, as against the plaintiff, and except as to persons having *bonâ fide* charges, or being *bonâ fide* creditors of the defendant, and whose charges and debts were thereby secured and provided for, the deed was fraudulent and void.

PRACTICE—NEXT FRIEND—COSTS—APPORTIONMENT BETWEEN SUCCESSIVE NEXT FRIENDS.

Bligh v. Tredgett, 15 Jur. 1101.

THE principle recognized in this case, although not new, had slumbered so long as to be forgotten. No other supposition will account for its being still suffered to survive as a rule of practice.

The principle is, that a next friend, although appointed without his own permission, and even without his own knowledge, is liable, as between himself and the defendants, to all the costs of a suit in chancery. His only remedy is against the solicitor who appointed him, and if that solicitor has absconded, the next friend has no remedy at all. This principle, we should hope, needs only to be mentioned in order to be abolished.

The leading case is *Dundas v. Dutens*, 1 Ves. jun. 196, a case as old as the year 1790. There, the bill, which was to set aside a settlement, was filed by the husband, certain creditors, and the solicitor, in order, as it proved, to defraud the children. Mr. Mansfield, for the plaintiff Sir Thomas Dundas, who had given no authority to file the bill, insisted that as the name of Sir Thomas was used without his authority, he was not to pay defendant's costs, but his name ought to be struck out, which he said would be immediately done at law; and compared it to the case of forging a name. Lord Thurlow, C.: "I doubt whether it would be so at law, and whether I can deliver him from the costs to be taxed against the plaintiffs. The defendants must have their remedy against the plaintiffs, and this plaintiff against him who pretended to be his agent. *If a man's name stands upon the record down to the hearing, which I can hardly conceive without his knowing it*, he must pay costs, if the bill is dismissed with costs . . . But it is a mere question of form; for he will have his expenses against the solicitor, who offers to pay into court immediately 200*l.* to answer the costs. And being a question of form, I wish it to be decided according to the strict principle of law."

In the case we have taken as the subject of this note, it was not "a mere question of form;" there was nothing to be got from the solicitor; and the very case arose, which Lord Thurlow could hardly conceive to be possible. The plaintiff's name stood upon the record down to the hearing without his knowing it. The facts of the case were briefly these:—a bill was filed by a married woman, concerning her separate property, in the name of a next friend, who had died two days before the bill

was filed. About fifteen months afterwards her solicitor substituted a Mr. Baker as her next friend, *without his knowledge*. A year later the bill was dismissed for want of prosecution, with costs. Notice of the motion to dismiss the bill was served on the plaintiff's agent, and by him sent by post to Mr. Baker, but not in time to enable him to appear on the motion. *This was the first intimation Mr. Baker received of the existence of the suit*. Meanwhile the solicitor of the married woman had become insolvent, and had absconded to America. And now Mr. Baker moved to vary the order dismissing the bill, with costs, by ordering that the solicitor should pay the costs. The solicitor, who named Mr. Baker as next friend, having absconded to America, it had become impossible to serve him personally, or by substitution, with notice of the motion. Karslake, for Mr. Baker, insisted that he ought not to be made to pay costs, as he could not recover them from the solicitor, who had absconded. A harder case could scarcely be imagined, than that a man's name should be thus used without his knowledge, and that he should be exposed to an indefinite liability which he had no means in the world of preventing or evading. The Vice-Chancellor, Sir James Parker, said, the practice of the court was quite clear, and there was no reason why Mr. Baker should be relieved from his liability as between him and the defendants. The cases which had been referred to went to this length, that though the solicitor had improperly used the name of, and though he was liable to indemnify the person whose name he had made use of, yet that circumstance did not interfere with the right of the defendants to look to the next friend for payment of costs. After citing at some length from the report of *Dundas v. Dutens*, his Honor said he could not relieve the next friend from the liability which the order imposed on him to pay the costs. He must pay the whole costs, as well those incurred before, as those incurred after he was appointed as next friend, and the additional costs of bringing these defendants on this motion before the court. *The solicitor was undoubtedly liable, but as he had gone to America, an order for him to pay would be useless*. The motion must be refused with costs.

The case, by leave of the court, being mentioned again on the question of apportionment, the Vice-Chancellor said he had always been of opinion that the court, on a change of next friends, did not apportion the costs between them. It was an analogous case where a plaintiff died and his executors revived the suit; there they were responsible for all the costs. The same principle must apply here. The person who was next friend when

the adjudication took place was the person to whom the defendants were to look for all the costs.

It follows, from the doctrine as affirmed in *Bligh v. Tredgett*, that any person may at any time be ordered by a court of equity to pay any sum of money to persons whom he has never seen, in respect of matters of which he has never heard, and for the happening of which he had never done any act to make himself responsible—any sum of money from 500*l.*, as in this case, to 5000*l.*, and that toties quoties, so long as he has enemies enough to file bills in his name. Had this bill been filed in the name of the Lord Chancellor as the next friend of the married woman, we should have had a stop put to this most monstrous regulation.

COSTS OF ASSIGNEES OF A BANKRUPT OR INSOLVENT.

Lock v. Lomas, 15 Jur. 162.

THE rule as to the costs of assignees of a bankrupt or insolvent has been subject to considerable obscurity. According to the earlier cases, the rule was that if in a suit by a mortgagee for foreclosure the mortgagor or any person claiming under him was bankrupt or insolvent, and it became necessary to make the assignees of the bankrupt or insolvent parties, if such assignees by their answer disclaimed all interest in the property, the court gave them their costs.

After this the law assumed a different aspect. Why, it was asked, should the assignees of a bankrupt or insolvent stand in a better position than the bankrupt or insolvent would have done? If one mortgaged his estate, in a suit for foreclosure he must pay the debt and costs. If he became insolvent, and his assignees took upon themselves the management of his estate, they did so with the knowledge of his circumstances, and they must take his rights and liabilities such as they were. They could not stand in a better position than the bankrupt or insolvent they represented, and if he could not have claimed costs, they could not either. Accordingly, in *Appleby v. Duke*, *Wigram*, V. C., refused costs to assignees of a bankrupt, and his decision was affirmed by Lord Lyndhurst on appeal (1 Hare, 303, S. C.; 1 Phill. 272; see also *Grigg v. Sturgis*, 5 Hare, 96.)

Lock v. Lomas, and the still more recent case of *Williams v. Lomas*, have thrown some light upon the rule. The former was a foreclosure suit, brought by mortgagees against, among other parties, the assignees of a tenant for life, who had executed the

mortgage deed. The assignees by their answer said, "That before the bill was filed, and also since the filing thereof, they had offered to the plaintiffs to disclaim by deed all, if any, the interest of the defendants in the estate therein mentioned, and in all and every the subject-matter of the suit, but which, their offers, had been refused by the plaintiffs." They also disclaimed by their answer in the usual form. On the cause coming on to be heard on bill and answer, it was argued for the plaintiffs that the terms of the answer were not sufficient to entitle the defendants to their costs; that though they said they offered to disclaim, they did not say they had offered to pay the costs of disclaiming, and the plaintiffs were entitled to a disclaimer at the cost of the defendants. Knight Bruce, V. C., held that the allegation in the answer was sufficient to entitle the defendants to their costs, and the bill was dismissed as against them with costs accordingly. A decision was made to the like effect in *Williams v. Lomas*, before the Master of the Rolls (see 16 Jur. 94), where the facts were substantially similar, his Honor saying, it was a great hardship if persons representing an insolvent estate, and having no funds wherewith to meet costs, were brought into a suit and exposed to heavy costs; and although it was settled that if they did not show that before putting in their answer they had abandoned all claim to the estate, they could not claim their costs of appearing in a suit to which they were necessary parties, yet it would be an intolerable oppression if, when, being informed they were made parties, they offered at once to give the plaintiff all he could obtain against them by a decree, the plaintiff should be entitled to keep them before the court and leave them to pay their own costs. The bill, therefore, was dismissed against the assignees with costs.¹

The practical rule then is this. The assignee of a bankrupt or insolvent disclaiming by his answer, but not before, will not be entitled to his costs; but if he shows by his answer, or by evidence, that before the suit, or immediately upon being apprised of the suit, he offered formally to disclaim all interest, then he is entitled to his costs.

¹ For the note of this case, which is not yet reported, we are indebted to the Jurist, vol. 16, part 2, p. 94.

COMMON LAW.**CHEQUE UPON A BANKER—EFFECT OF CROSSING—CUSTOM.****Bellamy v. Marjoribanks, 21 Law J. Exch 70.**

THIS is a decision of very considerable importance not only to the mercantile world, but also to the public in general. Everybody knows that one of the conditions upon which a cheque is exempted from the operation of the stamp laws is, that it should be made payable to bearer. The result of this was, that if a cheque were accidentally dropped, its loss was as likely to ensue as if it had been money, inasmuch as any person who picked it up might obtain payment for it. A device was found to remedy this inconvenience, and now that, in the words of the judgment in this case, "payment by cheques has almost entirely superseded all other modes of payment in large, and is in very general use in smaller money transactions; and the practice of crossing them with the name of bankers, the effect of which is the question in the present case, is also in very general use, and occurs in very many instances every day not only in London, but in all other parts of the kingdom," it is of great importance that the effect of these crossings should be rightly understood.

The facts upon which the question arose were these:—The plaintiffs were the trustees of a lunatic, and were as such parties to a suit in Chancery, as were also the next of kin of the lunatic. The solicitor of the latter, a Mr. Geary, sent to the solicitor of the former a cheque upon Messrs. Coutts to be signed by the plaintiffs, which it was, the words "General Unpaid Costs Account" having been by one of them added to the body of the cheque, as also a crossing "Bank of England for the account of the Accountant-General." It was returned in this state to Mr. Geary, who struck out the crossing, and crossed it with the name of his own bankers, by whom payment of it was received the next day, and the proceeds placed to the account of Geary. Through his defalcation the plaintiffs were obliged to pay the sum over again. Conceiving that the payment to Messrs. Gosling was not warranted, they commenced an action against Messrs. Coutts for the recovery of the amount of the cheque.

The first count (which was special) set out the facts, and proceeded to allege that the custom of bankers required the payment of a crossed cheque to be made to the bankers named in the crossing, and that it was the duty of the defendants to have paid the cheque in question to the Bank of England, and to them alone. The existence of any such custom was denied by the defendants. To a common count for "money lent," they pleaded

“payment.” Conflicting evidence was adduced at the trial as to the custom, upon which the jury took the plaintiffs’ view, and further expressed an opinion that the defendants were guilty of negligence in paying the cheque to Geary’s bankers. Their verdict was therefore for the plaintiffs; but a rule nisi for a new trial having been obtained, various points were urged upon its being argued by the counsel on either side. For the plaintiffs it was contended that the custom of bankers was such as was alleged in the first count, that a crossing by the drawer had a more restrictive effect than one by the holder of a cheque; that the payment pleaded was, as found by the jury, a negligent one; that the cheque being paid to the payee made no difference, the name of the payee being quite immaterial; that, even if the cheque was void in consequence of the stamp laws, by reason of the special crossing, the defendants might have been justified in refusing to pay it at all, but could not be so in paying it contrary to the directions of that crossing.

On behalf of the defendants the arguments used were, that the evidence did not warrant the finding of the custom; that no custom could be valid which contradicted the clear meaning of a written instrument; that whether the alleged custom restricted the payment to the bankers named, *or made its presentation through some banker necessary, it equally nullified the provisions of the Stamp Act, and that a crossing making the cheque no longer payable to bearer was void*; and as to the *indebitatus* count, that no payment could be negligent, which by law the defendants were justified in making.

The judgment of the court was that the rule should be made absolute. In delivering, it Parke, B., intimated that if this were an ordinary case of setting aside a verdict, the court would have done so, simply expressing the opinion which they held, that on the first count and on the plea of payment to the other count, it was against the evidence. “But,” observed the learned judge, “there is involved in the present controversy a most important question with regard to cheques upon bankers, and it seems to us therefore that it is right to state with some particularity the nature of the question to which the attention of the jury must be called on the new trial.” And first, as to the effect of the crossing and the custom which would make a crossed cheque payable only to the banker named, the court were clearly of opinion that no such custom was proved; that it could only have “been proved by a long, *well-known, acknowledged and universal usage and practice* among bankers to act in accordance with it;” and that, as many witnesses called from the different London banking houses, and all those called by the defendants

denied its existence, *the weight of evidence was against it*. The court were further of opinion "*that such a custom, if proved to have existed in fact, would be incapable of being supported in point of law.*" A crossing is not an indorsement; there is no delivery. As a direction by the drawer or holder to pay to a particular person only, it would cause the instrument to be no longer a cheque; and therefore "the crossing a cheque with the name of a particular banker could not have the effect of restricting its negotiability to such banker only. "Moreover," as was subsequently observed, "*if such were its conventional meaning, it would be necessary for bankers not merely to look to the signature of the cheque, but also to the handwriting of the crossing.*" And the court having reiterated their opinion that the effect of the crossing of a cheque was not to restrain its negotiability, they proceeded to consider what it probably was.

After having briefly touched upon what may be called the historical part of the inquiry, the court thought that the view of the custom which the evidence would have warranted was that which had been stated to exist by some of the special jury in *Stewart v. Lee* (Moo. & M. 158), viz. that bankers refuse to pay a crossed cheque to any one except a banker, that any other payment is made by them at their peril should the holder prove not to be entitled to the cheque; that the object is not to secure the payment to any particular banker, but to some banker, in order that it may be easily traced for whose use the money was received; and that all that is intended is to compel the holder to present the cheque through a quarter of known respectability and credit. "We are strongly inclined to think," added the learned judge, "on a full inquiry the usage will turn out to be no more than this,—the crossing is a mere memorandum on the face of the cheque, and forms no part of the instrument itself, and in no way alters its effect." Then, after having observed that such an usage was highly beneficial to the public, and that it was a great protection and safeguard to the real owner of a cheque, to be enabled through it to trace the money into the hands of the party who actually received it, the Court, *still drawing the whole effect of the crossing from the custom*, disposed of the distinction sought to be made between a crossing by the drawer, and a crossing by a holder. After making the observation already quoted as to the handwriting of a crossing, "it is matter of evidence," added the learned judge, "what its meaning is by the usage. The evidence has not made any distinction between the meaning of the words when written by the customer of the banker and by a third person It seems to us probable the more correct view,

that the practice of crossing was for the *protection of the owner of the cheque*." Finally, the court thus expressed their opinion of the security really attainable in this qualified view of the effect of a crossing: "We think there is no legal objection to the custom thus limited and understood, upon the ground of its being repugnant to the essential quality of the cheque, namely, its negotiability."

This is a very valuable decision. The security of a crossed cheque is well supported, and yet is kept within limits which could not be passed without casting great difficulty and increased risk upon bankers, nor without doing violence to the law. No weight was given by the Court to the fact of the payment being made to the *payee* of the cheque; that seems to be, as observed by the learned counsel for the plaintiffs, quite immaterial; indeed a practice exists of inserting in some cases a *number* instead of a name. It would seem that a crossing to be effectual should be at least "—— & Co." Nothing transpired to warrant the idea of some people, that two lines drawn across the cheque are alone sufficient. An argument, which does not appear from the report to have been made use of, might be drawn against the supposed necessity for the holder of a cheque crossed with the name of a particular banker to present it through that banker, from the difficulty in which he would be placed if, by the failure or otherwise of that particular banker, he were to become unable so to present it.

POLICY OF INSURANCE—JOINT STOCK ASSURANCE COMPANY—
JOINT CONTRACT—LIMITED LIABILITY.

Hallett v. Dowdall, 21 Law J. (Q. B.) 98, in error.

THIS case offers some points of very great interest. Now that the carrying out, by means of joint stock companies, of objects too great for individual enterprise is so common, and that on the one hand no change has been made in the liability of a partner, which remains by law unlimited, while on the other it frequently is impracticable to procure its limitation by means of an act of parliament or royal charter, the attempt is frequently made by introducing special terms into each contract made by a company to secure the desired result.

"There are very many companies," was the observation of one of the learned judges, "Life Insurances and others, carrying on business under deeds similar to that in the present instance, and provisions substantially the same as those contained in the present policy, are, I believe, universally inserted

with the view of restricting the liability of the shareholders." Such being the case, it becomes of the utmost importance both to all members of such companies, and also to all persons having any dealings with them, to understand their respective liabilities and rights, and the ways to be pursued for the enforcement of them.

In this instance the plaintiff below had effected a policy through his agents with a joint stock company, called the General Maritime Assurance Company. The policy contained the names of the directors and other officers, and, besides the usual form, certain clauses declaring that the capital, stock and funds of the company should alone be liable to answer and make good all claims, &c., and that no proprietor of the company or his heirs, &c., should be in anywise subject or liable to any claims, &c., nor be in anywise charged by reason of this policy beyond the amount of his shares in the capital stock of the company," it being one of the original and fundamental principles of the said company that the responsibility of the individual proprietors shall in all cases and under all circumstances be limited to their respective shares in the capital stock." The policy was signed by three directors. A loss having ensued, and the policy not being paid, the plaintiff brought an action of assumpsit against five shareholders, two of them being directors of the company, but neither of them having signed the policy.

The declaration which set out the policy charged a joint promise by the defendants; and a question was raised by one of the defendants upon demurrer to the declaration, and by three of the others upon demurrers to bad pleas by them pleaded, whether upon the whole of the declaration a joint promise was supportable. The Court of Queen's Bench decided in favour of it, and that judgment was affirmed. But upon the plea of "*non assumpserunt*" by the other defendant, questions arose on the trial, two of which we propose here to notice. The first was, that the defendants were not liable at law at all. The other, that if they were, they were liable severally and not jointly. Lord Campbell, C. J., ruled both points in favour of the plaintiff, and the present was the judgment of the Court of Exchequer Chamber upon the exceptions to that ruling. We may also observe that the capital of the company was 1,000,000*l.*, in 10,000 shares of 100*l.* each; that 7,500 shares had been subscribed for, 2,500 of which were since forfeited; that the defendant, upon whose plea these questions arose, was a holder of 250 shares, and that 25*l.* per share only had been called up. The provisions of the deed of settlement were more-

over not altogether regarded by the stipulations of the policy ; but this point was not considered, inasmuch as it had not been taken in the bill of exceptions.

Upon these questions the court of Exchequer Chamber was divided, Cresswell, J., and Williams, J., thought that the ruling of the Lord Chief Justice was right ; but the majority, consisting of Parke, B., Alderson, B., Talfourd, J., and Martin, B., held that it was wrong, at all events upon one point, and a *venire de novo* was awarded.

The questions involved are too numerous and too difficult to admit of any elaborate disquisition upon those branches of the law of partnership and agency, which they relate to ; we must content ourselves with an enumeration of them, and of the most recent cases which touch upon them ; and we shall then proceed to show how they were dealt with by the learned judges in this case. Now as to the remedies which an insurer may have at law upon a policy like the one now under consideration, they may, excluding the case of the directors or the company having funds in hand or in their power, be viewed in the following order ; first, he may sue any number (subject to a plea in abatement of course) of the proprietors of the company, and make them responsible to any amount ; second, he may sue the directors who actually signed the policy ; third, he may seek to recover from any individual shareholder to the extent of his shares not paid up, provided such shareholder has not already been made liable in other quarters to that extent ; fourth, he may do so even if he has. These last two methods would involve the first point made by the plaintiff in error ; and here we may notice that in the cases of *Halkett v. The Merchant Traders' Company* (19 Law J. Q. B. 59) and *Hassell v. the same* (4 Exch. 525), rules calling upon a shareholder of a similar company to show cause why execution should not issue against him were discharged, Lord Denman, C. J., saying, "It is plain that no action would have lain against Lord Talbot on this policy, to which he is not individually a party ; and as to the provisoes restraining liability, they have no sensible meaning at all, unless it be this, that the assured shall look to the funds of the company alone, *so far as any remedy at law extends.*" And Pollock, C. B., asking, "Can the plaintiff sue any individual member when he has trusted to the funds of the company ?"

As to the liability of the signing directors, it is true that in the cases of *Andrews v. Ellison* (6 Moore, 199), *Gurney v. Rawlins* (2 Mee. & Wels. 87), and *Dawson v. Wrench* (3 Exch. 359), they had been recovered against ; and, in this very case, one of the learned judges expressed a decided opinion "that the individuals

signing the policy personally contracted that the capital, stock or funds of the company should be applied to answer the claim on the policy," in which two others concurred, but not quite so strongly. On the other hand, the dissentient judges expressed their opinion most strongly, that "the signature of the directors had no such operation or purport, but that they were merely to testify the contract;" and "that they signed on behalf of the company generally, and, *if they had authority to do so*, were no more bound than any other members of it." How far they would else be liable and in what form, may be gathered from a reference to *Smout v. Ilbery* (10 M. & W. 1), *Jenkins v. Hutchinson* (18 Law J. Q. B. 274); see also 2 Smith's L. C. 222. Parke, B., however, expressly said that he "thought it unnecessary to decide whether the subscribing directors were liable, by reason of their signatures, as contracting parties or not;" while another judge said that possibly the contract might be of such a description, but deprecated his being understood as expressing any opinion on the point. These questions, therefore, can hardly be said to be free from doubt; and although the weight of opinion seemed to incline in favour of the separate liability of each shareholder, the case is only a direct authority against their being held jointly liable.

We now come to the arguments used in the conflicting judgments on the main point. It may be taken that the liability of the proprietors in an unincorporated joint-stock company in no way differs from that of ordinary partners, although no doubt in a company the shareholders have no power, and the directors but a more limited one, of binding their copartners. No doubt, however, seemed to exist but that such liability might be restricted, not indeed by agreement among the partners, which, in the words of a late judge, is but a mischievous delusion, but by special terms imported into each contract, provided that there were nothing illegal in so doing, and it was admitted that there was not. The policy was an ill-drawn and obscure instrument, and purported in its earlier terms to be an insurance by the "company," which Cresswell, J., insisted upon as equivalent to "copartnership," and containing a joint engagement; and Talfourd, J., confessed that it was in terms "which, if unqualified, would undoubtedly imply a contract by all its members; but these terms are capable of qualification, *and the question is whether they receive it.*" And on this, indeed, the whole point turned. The dissentient judges thought that each member had virtually contracted by the agency of the directors, and that the restrictions were inconsistent with the contract, and therefore, on the principle of *Furnivall v. Coombes* (5 Man. & G. 736), to be rejected.

Moreover, they relied upon the difficulty of applying the restriction in various cases where a shareholder might avail himself of it by a plea. The majority of the judges, however, were clearly of opinion that the restrictions were not repugnant, and that, although it might not be easy to say *how far they went*, still the general intention expressed on the face of the contract was clear beyond dispute; and that whatever the correct construction of the contract was, it certainly did not create a joint liability.

As to the point, therefore, whether the individual shareholders would be separately liable, this case cannot be looked upon as a decision. Martin, B., expressed his dissent from *Halkett v. The Merchant Traders' Association*; and the views of other judges seemed rather to point the same way. Thus the solution offered by Parke, B., is "by construing the term 'company' to denote the 'funds of the company,' which alone are to pay; or by holding that it means not the whole body collectively, but each individual of the company, so as to make each of them contract to bear the loss in the same proportion as his share bears to the total capital in the nature of a separate underwriter." This seems difficult to compute, as the learned baron himself admits. It is, however, preferable to what, according to Cresswell, J., would be, the *strict* construction, viz., "that any one shareholder *might, upon every policy issued by the company, be compelled to pay a part of the loss equal to the whole amount of his shares.*" Now, although in the present case the restriction was sought to be rejected as insensible and repugnant, still there seems no reason to doubt but that a shareholder's liability may be effectually restricted by special terms to the amount of his shares. If so, and if he be liable otherwise than for calls or under the Winding-up Acts, then it is submitted, notwithstanding the doubts thrown out by Cresswell and Williams, JJ., as to his pleading in answer to a declaration by a creditor of the company, that a plea showing the special terms of the contract, and that he had already, either by paying up his shares in full or by discharging other claims against the company, contributed to its liabilities to the whole amount for which he had subscribed, would be a bar to the action. How far a plea of payment into court of his fraction of the claim, and that the other shareholders were liable for other fractions, altogether making up the whole, would be an answer, is another thing.

**USURY—BILL OF EXCHANGE—COLLATERAL SECURITY ON LAND—
3 & 4 WILL. IV. c. 98, s. 7—2 & 3 VICT. c. 37.**

Clack v. Sainsbury, 21 Law J. (C. P.) 41.

Nixon v. Phillips, 21 Law J. (Exch.) 88.

WHATEVER might have been the policy of the restraint, any contract for the loan of money, no matter upon what security or how improbable repayment might be, was until a recent period utterly void, if more than five per cent. interest were reserved.

The first relaxation was effected by the 3 & 4 Will. IV. c. 98, in favour of bills of exchange and promissory notes not having more than three months to run, and that unconditionally. This relaxation was extended by the 1 Vict. c. 80 (a temporary act) to bills and notes not having more than twelve months to run. Then comes the 2 & 3 Vict. c. 37 (and the acts continuing it), which enacts, that no bill of exchange or promissory note made payable at or within twelve months after the date thereof, or not having more than twelve months to run, *nor any contract* for the loan or forbearance of money above the sum of 10*l.*, shall, by reason of any interest taken thereon or secured thereby, or any agreement to pay or receive or allow interest in discounting, negotiating or transferring any such bills of exchange or promissory note, be void; nor shall the liability of any party to any such bill or note, nor the liability of any person borrowing any sum of money as aforesaid, be affected by reason of any statute or law in force for the prevention of usury; nor shall any person drawing, accepting, indorsing or signing any such bill or note, or lending or advancing or forbearing money, &c., be liable to any penalties; adding a proviso that the enactment was not to extend to any loan or forbearance on the security of lands, &c., or any interest thereon. The question which arises upon the construction of these two statutes is whether they are to be taken as separate and independent enactments, or whether the effect of the latter statute be simply to enlarge the time mentioned in the former one, and impose in all cases the condition as to security upon land; in other words, whether the former statute was virtually repealed, or, as it were, absorbed by the latter. It may be remarked, that the latter statute exempts the contract itself, as well as the security, from the operation of the usury laws.

The point arose upon these facts:—*Nixon v. Phillips* was an action upon a bill of exchange for 116*l.*, payable at three months after date. An usurious agreement, that the defendant should pay 10*l.* for the loan of 106*l.*, was stated in the plea; to this it was replied, that the agreement was made since the 3 & 4 Will. IV. c. 98, whereupon the defendant rejoined, that it was made since the 2 & 3 Vict. c. 37, and that “the agreement gave

the plaintiff a security upon lands, namely, an equitable mortgage of land by means of the deposit of a lease by the defendant with the plaintiff." This was demurred to, and the argument used by the counsel for the plaintiff was, that the validity of a bill of exchange at three months was not affected by reason of its being secured by land, but that a bill at more than three and not more than twelve months was usurious if so secured. *Clack v. Sainsbury* was an action upon a bill at two months for 40*l.*, upon which 3*l.* discount had been taken. The pleadings were similar, the rejoinder not, however, averring that there was security upon land. As, however, the plea of usury under the 12 Ann. c. 16, is clearly good, and it lies upon the plaintiff to take his case out of its operation, the replication would have been bad for not averring *that the loan was not secured upon land*, if it had had to rely upon the 2 & 3 Vict. c. 37, so to exempt it; and this might have been the case if it had been requisite to show that the agreement was lawful (see *Follett v. Moore*, 4 Exch. 410). The judgment of both courts was in favour of the plaintiff. Although Parke, B., seemed to think that the legislature never could have intended that more than five per cent. should be taken upon a mortgage of land, yet there was no difference of opinion as to the fact of the 3 & 4 Will. IV. c. 98, being in full operation. It is to be taken as totally repealing the usury laws, so far as regards bills at three months, according to the opinions expressed by Maule, J., and Alderson, B. It is not absorbed or got rid of by the 2 & 3 Vict. c. 37; and it was said by Jervis, C.J., that the two statutes were quite consistent. The operation of the later statute is not, however, to repeal the 12 Ann. c. 16; this is shown by the cases of *Washbourn v. Burrows* (1 Exch. 107) and *Thibault v. Gibson* (12 M. & W. 88), but is, as said by Parke, B., "*to take out of its operation all contracts made usurious by that statute, except such as relate to land.*"

That this effect is the result of no oversight seems to be the opinion of Maule, J., who explains the fact by supposing that the legislature intended to give currency to mercantile bills which are generally drawn at two months from the date and not more than three, and that bills at those short periods got a larger licence in order to avoid in each case raising the question as to what was a "mercantile" bill or not. Pollock, C. B., also observes that there is a difference between the value of money borrowed for three months and that borrowed for twelve, and "that there is good reason why larger interest should be taken on a bill payable at three months, *even although there may be the security of land added to it*, than on a bill which has twelve months to run."

Short Notes of New Books.

The Literary Remains of John Stockdale Hardy, Fellow of the Society of Antiquaries. Edited by John Gough Nichols. London: John Bowyer Nichols & Son. 1852.

A VERY pleasing work, which will suit conservative politicians and antiquarians, whilst it affords matter interesting to the ecclesiastical lawyer. We like these agreeable *mélanges*, and thank Mr. Nichols for the pleasure he has afforded us.

The Practice of Insolvency under the Protection Acts, 5 & 6 Vict. c. 116, 7 & 8 Vict. c. 96, s. 10, and 11 Vict. c. 102. By David Cato Macrae, Esq., Barrister-at-Law. London: John Crockford, Essex Street, Strand. Part II. 1852.

THIS is the second part of a well-compiled work, already favourably noticed in our pages, which fully maintains the reputation acquired by the first part.

Journal of Psychological Medicine. Edited by Forbes Winslow, M.D. London: John Churchill, Prince's Street, Soho. 1852.

AN interesting and able number, containing the case of Mrs. Catharine Cumming.

Stewart v. Crommelin. A Report of a Judgment delivered in the Consistorial and Metropolitan Court of Armagh. By the Rev. Alexander Irwin, M.A. Dublin: Hodges & Smith. London: F. & J. Rivington. 1852.

A REPORT of a curious judgment in a curious case of priestly power, worth perusal by all who are interested in the doings of a certain party in the Church.

The Suitors' County Court Guide. By W. W. Charnock, Esq., Solicitor. London: Mitchell. 1852.

A USEFUL little handbook for the non-professional suitor or defendant in County Courts.

Pauperism and Poor Laws. By Robert Pashley, Esq., Q.C.

London: Longman. 1852.

WE are sorry that this important and very able work has reached us at so late a period that we cannot review it until our next number. We shall then do so in conjunction with some Reports on the same subject which challenge our attention. Mr. Pashley treats of pauperism statistically and socially, and enters at length on the best system and means of grappling with the evil and arresting its progress.

Suggestions as to Reform in some Branches of the Law. By James Stewart, Esq., of Lincoln's Inn, Barrister-at-Law. Second Edition. London: Stevens & Norton, Bell Yard, Lincoln's Inn. 1852.

WE are glad to see Mr. Stewart's able and valuable suggestions passing through the ordeal of successive editions. Every word Mr. Stewart utters on the subject of Law Reform is worthy of the most respectful attention.

Legislative Expression: or the Language of the Written Law. By George Coode, Esq. Second Edition. Turpin: London.

WE wish the government would appoint Mr. Coode to give, not only *legislative* expression, but common sense and grammatical expression to acts of parliament. Let him be the putter into plain English of all parliamentary jargon; so that we may get rid of the abuses and injustice done by the present unintelligibility of statutes. Mr. Coode's purpose is in the terms of his motto:—

"To say the truth, almost all the perplexed questions, almost all the niceties, intricacies and delays (which have sometimes disgraced the English as well as other courts of justice) owe their origin, not to the common law itself, but to innovations that have been made in it by acts of parliament, 'overladen,' as Sir Edward Coke expresses it, 'with provisos and additions, and many times on a sudden penned or corrected by men of none or very little judgment in law.'" —BLACKSTONE, *Commentaries*, Introd. Sect. 1.

"What I shall propound is not to the matter of the laws, but to the manner of their registry, expression and tradition; so that it giveth them rather new light than any new nature." —LORD BACON, *Proposal of a Digest*.

He has written very ably and sensibly on the subject, though in detail of machinery hardly elaborately enough.

Events of the Quarter.

The Ministry of which Lord John Russell was Premier having gone out of office, and that of Earl Derby having succeeded to it, the following new legal appointments have been made :—

Lord Chancellor—The Right Hon. Sir Edward Bertenshaw Sugden, now Lord St. Leonards.

Judge-Advocate—The Right Hon. George Banks, M.P.

Attorney-General—Sir Frederick Thesiger, M.P., Q.C.

Solicitor-General—Sir Fitzroy Kelly, Q.C.

Queen's Advocate—John Dorney Harding, D.C.L.

IN IRELAND.

Lord Chancellor—Mr. Chief Justice Blackburne.

Attorney-General—The Right Hon. Joseph Napier, Q.C., M.P.

Solicitor-General—Mr. Whiteside, M.P.

IN SCOTLAND.

The Lord Advocate—Mr. Adam Anderson.

Solicitor-General—Mr. John Inglis.

The Lord Chancellor of England has also made these appointments :—

Principal Secretary—Mr. John Stuart, jun.

Secretary of Lunatics—Mr. F. G. Reilly.

Secretary of Presentations—Mr. G. C. Bentinck.

Secretary of Commissions—Mr. Nassau Senior, jun.

Gentleman of the Chamber—Mr. Josiah Smith.

Sir John Dodson has been promoted to the Judgeship of the Court of Arches, on the death of Sir Herbert Jenner Fust.

MISCELLANEOUS.

The Benchers of the four Inns have resolved to establish professorships, liberally endowed, by whom lectures are to be given, and before a student can be called to the Bar he is to obtain certificates of attendance at them. Scholarships are also to be given.

If this is meant as a test of proficiency to act as a barrister, it must be wholly abortive. It will not even test the legal education of the students. They may be reading or thinking over the last new novel at the lectures, and know no more about them than if they were absent

from them, and yet be certificated. Examination is made merely optional.

It cannot, however, be too well considered whether any practicable examination will test the proficiency of a man to practise as an advocate. At least four-fifths of the utility of barristers to society consists, not in their knowledge of law, but in their faculty and art as advocates—which it is very doubtful whether any examination will test. Mere legal science is, no doubt, essential, and it will be a gain over the present system to secure that; but we must not over-estimate the advantage. One of the profoundest lawyers of our times has proved, moreover, a very inferior judge, and was the last person in court to see the point. We must not forget that where knowledge of law is required once in the practice of the barrister in court, knowledge of advocacy is needed a hundred times.

APPOINTMENTS, CALLS, &c.

CALLS TO THE BAR.—LINCOLN'S INN, JAN. 30.—Mr. Stephenson, Mr. Smith, Mr. Turner, and Mr. Macaulay.

INNER TEMPLE, JAN. 30.—Mr. M'Donnel, Mr. Pack, Mr. Waters, Mr. Peel, Mr. Papillon, Mr. Field, Mr. Stockes, Mr. Wood, Mr. Archer, Mr. Fowler, Mr. Barkworth, Mr. Connelly, Mr. Howard, Mr. Green, Mr. Smith, Mr. Kemplay, Mr. Glover, Mr. Archibald, Mr. Dasent, Mr. Wood, Mr. Lane, Mr. Lloyd, and Mr. Elers.

Sir J. E. Eardley Wilmot, Bart, has been appointed Recorder of Warwick, in the room of Mr. Mellor, Q. C.

Thomas Bros, Esq., M. A., of St. John's College, Cambridge, and Lincoln's Inn, has been appointed Recorder of the borough of Abingdon, vice H. J. Shepherd, Esq., Q. C., resigned.

OBITUARY.

FOSTER, Phillips, Esq.—On the 19th September, 1851, prothonotary and registrar of the Supreme Court of Sydney, New South Wales, aged 60.

CRABB, George, M. A.—On the 4th December, 1851, at Hammersmith, barrister at law, of the Inner Temple, within four days of completing his 73rd year.

Mr. Crabb, whose name will be hereafter remembered from the series of dictionaries and standard works of reference in law, science, history, and general literature, which, during a long literary career,

had at intervals issued from his pen, was born on the 8th December, 1778, at Palgrave, in Suffolk, a place it appears his parents left when he was very young, having purchased a small property at Wattisfield, in the same county. He passed his school-days at Diss, where that insatiable thirst for learning which with him was ever after a main characteristic, very early began to develop itself. On his finally leaving school, he remained for a period in the comparative seclusion of home, engaged in the study of the classics. Having arrived at an age when some profession or calling was to be thought of for the young student, he fixed his choice on that of medicine, but was obliged soon to relinquish it, his nervous organisation being so refined that he could not attend even a simple bleeding without fainting. Having quitted surgery and Colchester in disgust, he was shortly afterwards placed as an assistant to a bookseller, where it is not now known; his retired and studious habits, however, rendered him equally unfitted to cope with the active operations of a business life: his communings were with books, not men, and the literature he was employed to sell he read with avidity, but it remained undisposed of on his master's shelves.

From his infancy Mr. Crabb had a strong religious tendency, and being bred a dissenter he was next placed at Northampton to study for the ministry. His mind there became unsettled in the religious doctrines of his family, and in the end he forsook Northampton and came to London about the close of 1797. Early in the following year we find him, being then a bachelor, of the parish of St. Dunstan's in the West, taking the most important step in life. He married on the 6th January Miss Southgate, a lady some seven years his senior, and who still survives him, we regret to add in very straitened circumstances. Mrs. Crabb was the editress of "*Tales for Children*," from the German—a work in its day well known and popular.

Mr. Crabb next obtained the situation of classical master at Thorp Arch School, in Yorkshire. Here he did not remain long; and having cherished the desire of acquiring a proficiency in the German language, it would seem he shortly afterwards, in 1801, repaired to Bremen for that purpose. In that town he resided for five years and a half of his married life, devoting himself to a diligent study of the language and literature of Germany, and to the teaching of his native tongue. On his return to England he at once published his "*German Grammar*" and "*Dialogues in German*," works which for fifty years have maintained their popularity. So satisfied was he with the success of the German Manuals, that a literary career was determined on for the future, which he continued with persevering energy to the last.

We have already stated that the views of Mr. Crabb as to religion underwent some changes. After a laxity of opinion which he had imbibed in such matters, he became a consistent member of the Church of England. As such he went to the University of Oxford in 1814, and matriculated at Magdalen Hall as a gentleman commoner; he graduated B.A. in 1821, and M.A. in 1822, with mathematical honours.

In the interval that next occurred, literary compilation laboriously occupied the largest share of his attention, relieved by a commencement of the study of the law, till on the 3rd July, 1829, he was called to the bar by the society of the Inner Temple.

It might be inferred from his taking this step at the mature age of fifty-one, that he was led to expect some reasonable amount of business, if not of forensic distinction. For the latter, however, he was, by his retired and even bashful manner, singularly unfit. He wisely determined to practise as a conveyancer and chamber counsel; yet even here his want of address and a sort of independent but not repulsive manner, discouraged his receiving at the hands of the solicitors that amount of support which, from his learning, and the reputation of his published legal works, he might fairly have hoped to have received. His connection with the science of the law was rather as an author than as a practitioner, and the standard works which bear his name will suggest how important were his contributions to legal literature. In closing these brief memorials of the changeful yet not eventful life of one so long devoted to literary pursuits, it is sad to reflect how misfortune in his latter days seemed to attend upon his path and claim him for her own. The early lights of hope were all obscured by the darkening shades of disappointment, and here the clue may probably be suggested why that proud spirit, silently struggling with poverty, which death has alone revealed, practised an eccentric seclusion from the world and those with whom he came in contact.

His published works are—"A Dictionary of English Synonymes," 8vo.; "A Technological Dictionary," 2 vols. 4to.; "An Historical Dictionary, 2 vols. 4to.; "Familiar Synonymes illustrated," 12mo.; "A Dictionary of General Knowledge," 12mo.; "A History of the English Law," 8vo., 1829; "A Digest and Index of all the Statutes at Large," 4 vols. royal 8vo., 1841-7; "The Law of Real Property," 2 vols. royal 8vo., 1846; "A Series of Precedents in Conveyancing and Common and Commercial Forms," 3rd edit., 2 vols. royal 8vo., 1845; "A Technical Dictionary of Terms used in Science and Art, 12mo., 1851; "A German Grammar," 12mo.; "German Dialogues," 12mo.

The following works are left by him in manuscript:—"A Translation of Theophrastus;" "An Abridgment of Rollin's Ancient History;" "A History of Popery;" "Essay on Public and Private Happiness."—*Gentleman's Magazine*.

MILLER, Samuel, Esq.—On the 2nd February, at St. John's Fulham, barrister at law, aged 52.

HOBBS, W. H., Esq.—On the 15th February, late of the Queen's Remembrancer's Office, aged 51.

DENTON, John, Esq.—On the 18th February, barrister at law, aged 74.

FUST, Sir Herbert Jenner.—On the 20th February, aged 74.

SAYRES, John, Esq.—On the 11th March, barrister at law, aged 34.

BOWER, C. Holme, Esq.—On the 12th March, solicitor, aged 29.

ROSE, John, Esq.—On the 13th March, solicitor, aged 71.

ABBOTT, John, Esq.—On the 27th March, solicitor, aged 51.

HARRAP, Richard, Esq.—On the 27th March, solicitor, aged 64.

MEGGY, Robert, Esq.—On the 27th March, solicitor, aged 46.

Legal Documents.

LEGAL EDUCATION.

THE following is the report made to the Benchers of the several Societies of Lincoln's Inn, the Middle Temple, the Inner Temple, and Gray's Inn, by the Committee on the subject of Legal Education :—

Your committee have considered the subjects which were referred to them, and have to report to the several societies that they have agreed on the following rules and regulations :—

1. That the four Inns of Court shall act in concert with each other in the joint establishment and maintenance of an uniform system for the legal education of students before admission to the Bar.

2. That a standing committee or council be established, to consist of eight members, two to be nominated by each of the Inns of Court, and of whom four shall be a quorum. The members shall remain in office for two years, and each inn shall have power to fill up any vacancy that may occur in the number of its nominees during that period. To this council shall be entrusted the power and duty of superintending the whole subject of the education of the students, and of arranging and settling the details of the several measures which may be deemed necessary to be adopted.

3. That for the purpose of affording to the students the means of obtaining instruction and guidance in their legal studies, five readerships or professorships shall be established, which shall consist of the three readerships already established by the Societies of the Middle Temple, the Inner Temple, and Gray's Inn, viz. on jurisprudence and the civil law, the law of real property and the common law, and also of a reader on equity to be named by the Society of Lincoln's Inn, and of a readership on constitutional law and legal history to be founded by the four societies jointly. The readers shall be appointed for a period of three years, and the reader on constitutional law and legal history shall be chosen by the standing council.

4. That the duties of the readers (subject to regulation by the standing council) shall consist of the delivery of three courses of lectures in each year, of the formation of classes of students

for the purpose of giving instruction in a more detailed and personal form than can be supplied by general lectures, and of affording to students generally advice and directions for the conduct of their professional studies.

5. That the four Inns of Court shall form a common fund by annual contributions, the amounts of which shall be mutually agreed on, and out of which fund shall be drawn the stipends to be assigned to the readers, and such studentships as shall from time to time be conferred upon students.

6. That the lectures and classes of the readers shall be open to the students of all the societies without distinction, subject to the payment of such fees as are hereinafter directed.

7. That the stipend of each reader shall be 300 guineas per annum, and such stipends, and also the expense of the studentships, shall be wholly defrayed out of the common fund to be raised by the contributions of the several societies.

8. That each student shall on admission pay a sum of five guineas, which shall entitle him to attend the lectures of all the readers.

9. That the funds composed of such last-mentioned payments shall be annually divided among the five readers equally, in addition to their stipends.

10. That (subject to regulation by the council) every student shall be at liberty to attend such classes as he may think necessary, upon payment of a moderate fee to the reader, but care shall be taken by the council that such fees shall not in any year exceed the sum of three years.

11. That for the purposes of education the legal year shall be considered as divided into three terms or periods, one commencing with the 1st of November and ending on the 22nd of December, the second commencing on the 11th of January and ending on the 30th of March, and the third commencing on the 15th of April and ending on the 31st of July, subject to a deduction of the days intervening between the end of Easter and the beginning of Trinity Term.

12. That no student shall be eligible to be called to the Bar who shall not either have attended during one whole year the lectures of two of the readers, or have satisfactorily passed a public examination.

13. That public examinations shall be instituted, to be held three times a year, for the examination of all such students as shall be desirous of being examined previously to being called to the Bar, and such examinations shall be conducted by at least two members of the council jointly with the five readers, and certificates of having honourably passed such examination shall

begiven to such student as shall appear to the examiners to be entitled thereto.

14. That such examinations shall be held in Michaelmas Term, Hilary Term and Trinity Term.

15. That as an inducement to students to propose themselves for examination, studentships shall be founded of fifty guineas per annum each, to continue for a period of three years, and one such studentship shall be conferred on the most distinguished student at each public examination; and further, the examiners shall select and certify the names of three other students who shall have passed the next best examinations, and the Inns of Court to which such students belong may, if desired, dispense with any terms, not exceeding two, that may remain to be kept by such students previously to their being called to the Bar; provided that the examiners shall not be obliged to confer or grant any studentship or certificate, unless they shall be of opinion that the examination of the students they select has been such as entitles them thereto.

16. That at every call to the Bar those students who have passed a public examination, and either obtained a studentship or a certificate of honour, shall take rank in seniority over all other students who shall be called on the same day.

17. That the standing council shall have power to grant dispensations to students who shall have been prevented by any reasonable cause from complying with all the regulations as to the attendance on lectures which shall from time to time be established.

18. That it is expedient that henceforward there should be uniformity of usage at the respective Inns of Court as to the admission of students as members of those societies.

19. That it is expedient that no attorney-at-law, solicitor, writer to the signet or writer of the Scotch Courts, proctor, notary public, clerk in Chancery, parliamentary agent or agent in any court, original or appellate, clerk to any justice of the peace, or person acting in any of these capacities, and no clerk of or to any barrister, conveyancer, special pleader, equity draftsman, attorney, solicitor, writer to the signet or writer of the Scotch Courts, proctor, notary public, parliamentary agent or agent in any court, original or appellate, clerk in Chancery, clerk of the peace, clerk to any justice of the peace, or of or to any officer in any Court of Law or Equity, or person acting in the capacity of any such clerks, should be admitted a member of any of the said societies for the purpose of being called to the Bar, or of practising under the Bar, until such persons, being on the roll of any court, shall have taken his name off the rolls thereof, nor

until he and every other person above named or described shall have entirely and bonâ fide ceased to act or practise in any of the capacities above named or described.

20. That it is expedient that no member of any of the said societies should be allowed to apply for or take out any certificate to practise, either directly or indirectly, as a special pleader or conveyancer, or draftsman in equity, without the special permission of the Masters of the Bench of each society respectively, and that no such permission should be granted until the member applying shall have kept twelve terms.

21. That such permission should only be granted for one year from the date thereof, but may be renewed annually by order, as aforesaid.

22. That it is expedient that no person be allowed to obtain any such certificate unless he shall have attended such lectures, or passed such an examination, as under the preceding rules would be necessary to entitle him to be called to the Bar.

23. That it is expedient that the following forms should be adopted by the said societies on applications for admission as members :—

“ I, _____, of _____, aged _____, the _____ son of _____, of _____, in the county of _____ (add father's profession, if any, and the condition in life and occupation, if any, of the applicant), _____, do hereby declare that I am desirous of being admitted a member of the Honourable Society of _____, for the purpose of keeping terms for the Bar, and that I will not, either directly or indirectly, apply for, or take out, any certificate to practise, directly or indirectly, as a special pleader, or conveyancer, or draftsman in equity, without the special permission of the Masters of the Bench of the said Society.

“ And I do hereby further declare that I am not an attorney-at-law, solicitor, a writer to the signet, a writer of the Scotch Courts, a proctor, a notary public, a clerk in Chancery, a parliamentary agent, an agent in any court, original or appellate, a clerk to any justice of the peace, nor do I act, directly or indirectly, in any such capacity, or in the capacity of clerk of _____ or to any of the persons above described, or as clerk of or to any officer in any Court of Law or Equity.

“ Dated this _____ day of _____ (Signature.)

“ We, the undersigned, do hereby certify that we believe the above-named _____ to be a gentleman of respectability, and a proper person to be admitted a member of the said society.

} Barristers of

Approved, {

Treasurer, or in his absence, by two Benchers.”

24. That it is expedient that every member of the said societies should have kept twelve terms before being called to the Bar, unless any term or terms shall have been dispensed with under the 15th preceding rule.

25. That it is expedient that every member of the said societies should have attained the age of twenty-one before being called to the Bar.

26. That it is expedient that members of the said societies who shall at the same time be members of the Universities of Oxford, Cambridge, Dublin, London or Durham, should be enabled to keep terms by dining in the halls of their respective societies any three days in each term.

27. That members of the said societies who shall not at the same time be members of the said universities, should be enabled to keep terms by dining in the halls of their respective societies any six days in each term.

28. That it is expedient that no day's attendance in the respective halls should be available for the purpose of keeping term, unless the member so attending shall have been present at the grace before dinner, during the whole of dinner, and until the concluding grace shall have been said.

29. That it is expedient that no member of any of the said societies, desirous of being called to the Bar, should be so called until the name and description of such candidate shall have been placed upon the screens hung in the halls, benchers' rooms, and treasury or steward's offices of each society fourteen days in term before such call.

30. That it is expedient that the name and description of every such candidate should be sent to the other Inns of Court, and should also be screened for the same space of time in their respective halls, benchers' rooms, and treasury or steward's offices.

31. That it is expedient that the above regulations as to screening names, &c., should be applied to members seeking certificates to practise as special pleaders, conveyancers, or equity draftsmen.

32. That it is expedient that no call to the Bar should take place except during term, and that such call shall be made on the same day by the several societies, namely, on the sixteenth day of each term, unless such day happen to be Sunday, and in such case on the Monday after.

33. That all the foregoing rules and regulations shall come into operation on the first day of Trinity Term now next ensuing, and shall apply to all persons entering as students on and after that day, and also to all existing students who shall not by the

first day of Trinity Term next have kept more than four terms ; but all other students shall, if they desire it, be admitted to the benefit of the lectures and classes, and be entitled to submit themselves to public examination upon the same terms and subject to the same regulations as are hereby made applicable to students entering on and after the first day of Trinity Term, 1852.

The committee have abstained from framing any scheme, or making any suggestion, as to the fees or dues charged by the Inns of Court to their respective members, or the deposits, or the entrance of students, as they consider that these are matters of internal arrangement which may with more propriety be left to the discretion and regulation of the societies respectively.

**REMOVAL OF THE COURTS FROM WESTMINSTER TO THE
INNS OF COURT.**

THE following petition on this subject has been presented by the Incorporated Law Society :—

To the Honorable the Commons of the United Kingdom of Great Britain and Ireland in Parliament assembled.

The humble petition of “The Society of Attornies, Solicitors, Proctors and others, not being Barristers, practising in the Courts of Law and Equity of the United Kingdom,” incorporated by charters of King William the Fourth and Queen Victoria,

Showeth,—That evidence was taken before two select committees of your Honorable House appointed “to consider the expediency of erecting a building in the neighbourhood of the Inns of Court for the sittings of the Courts of Law and Equity, in lieu of the present courts adjoining to Westminster Hall, with a view to the more speedy, convenient and effectual administration of justice,” and which evidence is contained in the reports of the select committee, bearing date respectively the 22nd July, 1842, and the 1st August, 1845.

That your petitioners find it proved, both by facts and by the opinions of the highest judicial officers, and other persons of great eminence and experience in the law, that the distance of the Westminster Courts from the law offices, and from the chambers of the barristers and solicitors, causes much delay in the administration of justice, and is thereby productive of great inconvenience to all classes of the profession, and of great loss to the suitors of the courts.

That the Courts of Chancery sit at Westminster during two of the four terms, and in the vacations in Lincoln’s Inn, and

that the Common Law Courts sit during all the four terms and at the sittings after term at Westminster.

That, amongst other facts, it is shown that little or no progress is made in the preparation of equity pleadings while the Courts sit at Westminster, and that during the same period the proceedings upon references in the Masters' offices, requiring the assistance of counsel, are totally suspended through the inability of counsel to attend them. It is also shown that these causes of delay (which result solely from the distance of the Westminster Courts from chambers) are removed when the judges adjourn their sittings to Lincoln's Inn; and it is shown in like manner that the chamber business of the common law barristers is much hindered by the remoteness of the courts; and that their attendance on the judges at chambers, and on references pending before the common law Masters, and on consultations and conferences with attornies and solicitors, is rendered difficult and uncertain; and that whilst the despatch of business thus urgently demands the attendance of counsel at or in the neighbourhood of the Inns of Court, the barristers are obliged to pass the greater part of their time at Westminster in comparative idleness, without the opportunity of employing their vacant intervals of time in any manner serviceable to the suitors or themselves.

That it is also shown by such evidence that the attendance of the attornies and solicitors at the Westminster Courts is subject to similar inconvenience and loss of time; that it draws them away, often for days together, from their various duties at their own chambers and the law offices, from their many engagements with clients, with counsel at chambers, with the Masters of the courts, and with members of their own profession, to the sacrifice of their own and others' time, to the delay of business, and to the great prejudice and inconvenience of their clients. That in consequence of such distance the principals are obliged to delegate to their clerks much important business which they would otherwise themselves superintend.

That the situation of the Westminster Courts is in many other ways at variance with the interests of the suitors: thus it is proved that court business in equity is transacted in a less perfect and satisfactory manner at Westminster than at Lincoln's Inn; that books, papers and information which may happen to be required from the public offices or from solicitors' chambers during the hearing of a cause, and which are at hand in the latter case, cannot frequently be procured at the distance of Westminster. It is also shown that the despatch necessary in urgent cases in drawing up the rules and orders of the Common

Law Courts cannot be attained, and that the communication between the officers attending the court and their offices is otherwise inconveniently interrupted.

That it is clearly proved that from these causes, and various other inconveniences of a like nature, arising from the situation of the Westminster Courts, the business of the law is done with more effort and waste of strength, with less accuracy, less precision, and less expedition than it might or ought to be, and that those evils diminish the relief whilst they increase the costs of the suitor.

That the present courts at Westminster, and the rooms and offices attached to them, are admitted by all to be inadequate to the purposes to which they are appropriated; and your petitioners submit that such inadequacy may well be now supplied, when the erection of new courts and offices is imperatively called for, and cannot be dispensed with.

That the Master of the Rolls and two of the Vice-Chancellors occupy only temporary courts at Westminster; that the Court of Common Pleas has no court in term for the trials at Nisi Prius; and that the Queen's Bench and the Exchequer have no adequate courts for the same purposes; that for want of better accommodation, consultations are frequently held in the robing-rooms and in the passages and avenues of the courts; that those passages are dark and intricate; that there are no rooms or places of waiting for jurymen, witnesses and parties; that there is no library, except a small one for the Equity Courts; no sufficient rooms for the Bar, and none for the attornies; nor any sufficient consultation rooms.

That it is proved by the evidence of the Senior Masters in Chancery and of others, that the offices of the Masters (independently of being separated from the Equity Courts) are wholly insufficient for the satisfactory transaction of business; and by the evidence of the Senior Registrar in Chancery, that the Registrars' offices are so limited in space as not to afford a distinct room for each of those important offices.

That the offices of the Accountant-General of the Court of Chancery are very small and inconvenient; and that the whole of these offices and their contents, the books and accounts of the sixty millions of money now under the guardianship of the court, and all the accounts of the past, are (by the construction of the building or otherwise) altogether unprotected from the casualty of fire; and that the records also in that part of the Registrar's Office called the Report Office, the repository of the decrees and orders of the Equity Courts for centuries past, are in the same unprotected state.

That it appeared by the evidence of Sir Charles Barry, the architect, that "the present plan for the new Houses of Parliament, if carried into effect, would leave no room whatever for any other public purpose," and that "no further space or increase of accommodation can be given to the Courts at Westminster without very much injuring his plan, as it regards the Houses of Parliament;" but that, if the courts were removed, "it would afford the means of making a very considerable improvement, both in the convenience and in the external character of the new Houses of Parliament."

That the facts before stated show that a considerable outlay for providing accommodation for the courts and the Chancery offices has become unavoidable; and your petitioners submit, that a remarkable variety of circumstances has combined to suggest the manner in which that outlay should be expended, namely, in a union of the Law and Equity Courts, and of the Masters, Accountant-Generals, Registrars and other Chancery offices upon the same spot, in the vicinity of the Inns of Court.

That it is clearly established in evidence, that no public necessity exists for the courts of law being contiguous to the Houses of Parliament; it is shown that the judges are only called to attend the House of Lords when their courts are not sitting at Westminster, and that with reference to obtaining counsel on the hearing of appeals, and on Parliamentary Committees (besides that there is at present a distinct Parliamentary Bar), there is now no difficulty in obtaining the assistance of the ablest counsel, whether the Courts are sitting at Westminster or elsewhere; and it is the opinion of witnesses of the highest authority and weight, that no such difficulty would be experienced if the Courts were permanently fixed in the vicinity of the Inns of Court.

Your petitioners therefore humbly pray that your Honourable House will take this subject into your early consideration, with a view to the adoption of such measures to meet the existing evils as to your Honourable House may seem meet.

And your petitioners will ever pray, &c.

List of New Publications.

— — —

Archbold.—The whole of the New System of Criminal Procedure, Pleading and Evidence in Indictments as founded on Lord Campbell's Act, 14 & 15 Vict. cap. 100, and other recent Statutes, with New Forms of Indictments and the Evidence necessary to support them. By J. F. Archbold, Esq., Barrister. 12mo. 22s. boards.

Begbie.—Partnership en Commandite, or limited Liability recognized and permitted by the existing Law of England. By M. Begbie, Esq., Barrister. 8vo. 1s. sewed.

Charnock.—The Suitor's County Court Guide; containing Plain and Practical Directions for the Recovery of Debts, Damages, &c., in the County Courts without the aid of Professional Men; together with Forms to be used, and the Fees payable on the various Proceedings; with General Advice and Instructions to Defendants; forming a complete Hand-Book to the County Court. By W. W. Charnock, Attorney. 18mo. 2s. cloth.

Dart.—A Compendium of the Law and Practice of Vendors and Purchasers of Real Estate. By J. H. Dart, Esq., Barrister. Second Edition. 8vo. 21s. cloth.

Denman.—Letters on Law Reform. By the Right Hon. Lord Denman. Addressed to the Lord Chancellor (Truro). 8vo. 1s. sewed.

Digest.—A Digest of Cases decided in the Court of Session, Teind Court, Court of Exchequer and House of Lords, from November, 1840, to November, 1850. By D. T. Macbair, Solicitor. Royal 8vo. 27s. cloth. (Edinburgh.)

Forsyth.—History of Trial by Jury. By W. Forsyth, Esq., M.A., Barrister. 8vo. 8s. 6d. cloth.

Gorham v. Bishop of Exeter.—The Case of the Rev. G. C. Gorham against the Bishop of Exeter, as heard and determined by the Judicial Committee of The Privy Council on Appeal from the Arches Court of Canterbury. By E. F. Moore, Esq., M.A., Barrister at Law. Royal 8vo. 18s. cloth.

Jeffrey.—Life of Lord Jeffrey, with a Selection from his Correspondence. By Lord Cockburn. 2 vols. 8vo. 25s.

Johnson.—The Acts for Promoting the Public Health, 1848 to 1851, to which is added the Practice of the General and Local Boards of Health, with Copious Notes and Tables. By C. W. Johnson, Esq., Barrister. 12mo. 7s. cloth.

Life Assurance.—Indisputability Disputed; a Review of the Profession and Practices of certain Modern Life Offices. By a Templar. 8vo. 1s. 6d. sewed.

Macrae.—The Practice of Insolvency under the Protection Acts, with Statutes Rules, Orders, Lists of Fees, &c. By D. C. Macrae, Esq., Barrister. 12mo. 21s. cloth.

Pashley.—Pauperism and the Poor Laws. By R. Pashley, Esq., Q. C. 8vo. 10s. 6d. cloth.

Phillipps.—A Treatise on the Law of Evidence. Tenth Edition, with considerable Alterations and Additions. By Right Hon. S. M. Phillipps and T. J. Arnold, Esq., Barrister. 2 vols. Royal 8vo. 2l. 16s. boards.

Prendergast.—The Law relating to the Officers of the Navy. By H. Prendergast, Esq., Barrister. 12mo. 10s. 6d. cloth.

Roberts.—The Principles of the High Court of Chancery and the Powers and Duties of its Judges. Designed as the Student's First Book on Equity Jurisprudence. By T. A. Roberts, Esq., Barrister. 8vo. 12s. cloth.

Strictures on the Practice of Judges who act as Prosecuting Counsel, with Remarks on Criminal Proceedings at Quarter Sessions. By a Member of the Temple. 8vo. 1s. sewed.

Sugden.—Shall we register our Deeds? answered by Sir Edward Sugden. 8vo. 1s. sewed.

INDEX TO VOL. XLVII.

(VOL. XVI. OF THE NEW SERIES.)

Bar, Scotch, 72.

Bankruptcy, District Courts of, 176.

Brougham, Lord, his Bill on County Courts reviewed, 139; on Bankruptcy Courts, 176.

Constituencies, County Reform of, 1.

County Courts, Scotch, 17, 145.

Counsel, Attorney and Client, 25.

Correspondence, 133.

County Courts Extension Bill, 139.

Criminal Children, 162.

District Courts of Bankruptcy, 176.

Equity County Courts proposed, 82.

Events of the Quarter, 128, 285.

Foreign Powers, Treaties with, On, 11.

Fusion of Law and Equity, 82.

Historical relation of Counsel, Attorney and Client, 25.

Indictments under Lord Campbell's Act, 14 & 15 Vict. c. 100 . . 66.

Lords, Legal Competence of House of, 72.

Leading Cases, Notes of—Equity, 105, 267; Common Law, 114, 273.

Legal Papers and Documents, 135, 290.

List of New Publications, 137, 299.

Our Laws of Progress, 187.

Partnership en Commandite, 50, 255.

Patteson, Sir John, Memoirs of, 90.

Progress, Our Laws of, 187.

Publications, List of New, 137, 299.

Reform of County Constituencies, On, 1.

Scotch County Courts, 17, 150.

Short Notes of New Books, 123, 283.

Treaties, Conventions, &c. with Foreign Powers, 11.

Vendors and Purchasers of Real Estate—Review of Mr. Dart's work on, 184.

LONDGN :

PRINTED BY C. ROWORTH AND SONS,
BELL YARD, TEMPLE BAR.

A DIGEST

OF

ALL THE CASES, IN ALL THE COURTS

OF

LAW AND EQUITY,

AND IN THE

ADMIRALTY, ECCLESIASTICAL AND BANKRUPTCY

Courts,

CONTAINED IN THE STANDARD REPORTS.

LAW MAGAZINE, VOL. XVI., N. S., FEB. & MAY, 1852.

CONTENTS:

	PAGE
COMMON LAW	1, 58
CRIMINAL AND MAGISTRATES' CASES	34, 81
EQUITY	36, 86
BANKRUPTCY	107
LIST OF CASES	53, 109

Digest of Cases.

COMMON LAW.

Comprising the Common Law Cases (not previously inserted) in the following

Reports :—

6 Exchequer Reports, part 1.	8 Common Bench, part 5.
15 Queen's Bench Reports, part 3.	20 Law Journal (N. S.), parts 11, 12

ACTIONS AGAINST SEVERAL PERSONS ON A JOINT LIABILITY.—*Judge's order—Payment of costs.*—B. brought separate actions against M. and H., two members of the committee of management of a railway company, for a debt from the company for which M. and H. were jointly liable, though different evidence was requisite to prove the liability of each. B. obtained a verdict against H.; M. had a verdict in his favour, but a rule for a new trial was in this case granted, after which M. paid the whole debt and the costs of the action against himself, which payment included a farther sum than that to which H. was liable: Held, that a judge's order, staying proceedings in the action of B. against H., before judgment had been signed, without payment of costs, was properly made. *Bailey v. Haines, Baxter v. Bracebridge*, 8 C. B. 533.

ACTION FOR DOUBLE VALUE.—4 Geo. 2, c. 28, s. 1—*Demand of possession.*—An action for double value under stat. 4 Geo. 2, c. 28, s. 1, for holding over after notice to quit, is not supported by a notice that the landlord requires the tenant to give up possession at twelve at noon on, &c. (the day when the tenancy was determinable), at which time the landlord will attend to receive the keys and rent, and that, in the event of the tenant not so surrendering, the landlord will demand 7s. daily rent (a rate more than double the original rate of rent) till he can obtain legal possession; for the requisition to deliver up the premises at noon is premature, and insufficient as a notice to determine the tenancy; although a notice to quit, when regular, operates also as a demand of possession under the statute without a more specific demand. *Semble*, that a notice having the above defect is not equivalent to a demand. *Page v. More*, 15 Q. B. 684.

AMENDMENT.—*Reference—Limitations, Statute of.*—A firm carried on business as A., B. and C. At the time of an alleged debt
VOL. XVI. NO. XXX. B

being contracted, B. and C. were surviving, and an action was subsequently commenced in their names. For more than three years after issue joined, negotiations were pending for a reference, which ultimately went off, and notice of trial was then given. It was then discovered that at the time of the debt being contracted eight other persons were beneficially interested in the firm. The court allowed the writ and other proceedings to be amended, by adding the names of those persons, in order to avoid the effect of the Statute of Limitations. *Carne v. Malins*, 20 Law J. (N. S.) Exch. 434.

ARBITRATION.—1. *Award—Enforcement—Rule of court*—1 & 2 Vict. c. 110, s. 18—*Payment to plaintiff or attorney*.—Where all matters in difference in a cause are referred by judge's order, the court will enforce the payment of the sum awarded by a rule of court, under 1 & 2 Vict. c. 110, s. 18, although the time for moving to set aside the award has not expired. An award, ordering the defendant to pay the sum awarded to the plaintiff or his attorney S. is good, without any power of attorney to S. to demand the money. *Hare v. Fleay*, 20 Law J. (N. S.) C. B. 249.

2. *Award—Enlarging of time—Application for making*.—Pursuant to the power given by an order of reference at nisi prius, an arbitrator enlarged the time for making his award. The case proceeded, and the parties attended before the arbitrator after the time specified in the enlargement had expired. Neither party was aware that the arbitrator had omitted to keep the time enlarged. The award was made in favour of the plaintiff. Two terms having further elapsed since the award was made, the plaintiff proceeded to tax his costs, on which occasion the defendant discovered the want of the enlargement, and objected that the award was bad. The court, on the application of the plaintiff, enlarged the time for making the award, under the stat. 3 & 4 Will. 4, c. 42, s. 39. If it appear on the affidavits, in support of an application for an enlargement, that the cause has been referred by an order of nisi prius, and that the order of reference has been made a rule of court, it is sufficient to draw up the rule nisi for the enlargements on reading the affidavits and order of nisi prius; and it is not absolutely necessary for such an application that the rule nisi be drawn up on reading the rule making the order of reference a rule of court. *Browne v. Collyer*, 20 Law J. (N. S.) Q. B. 426.

3. *Award—Enlargement of time—Costs*.—A declaration stated that it was agreed between the plaintiff and the defendants that in a certain event Joseph H. should say, by his award in writing, to be delivered "on or before the 30th of December next, or on some such ulterior day as the said Joseph H. by a memorandum in writing under his hand to be indorsed thereon," (omitting the words "shall appoint,") what if anything shall be paid to S. K., and "that the said James H. took upon himself the burthen of the reference," and enlarged the time, &c. The declaration then set out the award, which commenced thus: "To all to whom these presents shall come, I, Joseph H., of &c., send greeting," and further, "I, Joseph H.,"

award the sum of 270*l.* to be paid to S. K. by the defendants, and that a promissory note of S. K. and Mary A. K. shall be given up to be cancelled, on condition that S. K. or Mary A. K., or either of them, shall not by any proceeding seek to compel the defendant or other the plaintiff in certain actions to prosecute the said actions on the promissory note, or to pay costs thereon; also on the condition that the plaintiff shall release the defendants from all actions as to the colliery; the deed of release, in case of difference, to be settled for both parties by Henry V." The arbitrator ordered, lastly, that the costs of the arbitration award should be paid thus; "two third parts thereof by the defendants, and the remaining one third part thereof by the plaintiff." "In witness whereof I, Joseph H., have hereunto set," &c. First breach, nonpayment of the sum of 270*l.*; second, that two third parts of the costs of the arbitration amounted to 500*l.*, and that the defendants had not paid two third parts of the costs: Held, that there was a sufficient power to enable the arbitrator to enlarge the time; that it sufficiently appeared by the declaration that the award was made by the same person to whom the submission was made; and that the first breach was good and the second bad. *Kirk v. Unwin*, 20 Law J. (N. S.) Exch. 345.

BANKRUPT.—*Consolidation Act*, 12 & 13 Vict. c. 106, ss. 224, 225—*Deed of arrangement—Pleading.*—A deed of arrangement by a trader, executed by the number of creditors required by the 12 & 13 Vict. c. 106, s. 224, is not binding upon any creditor not a party to it, unless the deed provides for the distribution of the whole of the trader's estate amongst his creditors. A plea setting up such deed of arrangement should allege that the party was a trader for six calendar months preceding his suspension of payment. *Drem v. Collins*, 20 Law J. (N. S.) Exch. 369.

BANKRUPTCY.—12 & 13 Vict. c. 106, ss. 125, 141—*Order of Court of Bankruptcy.*—Under the 12 & 13 Vict. c. 106 (The Bankruptcy Law Amendment and Consolidation Act), s. 141, a title to the bankrupt's own property passes by the adjudication; but in order to divest the bankrupt's right of property to goods in his reputed ownership, an order of the court, under section 125, to sell and dispose of the property, is necessary: so held by the court, dubitante Platt, B. *Heslop v. Baker*, 20 Law J. (N. S.) Exch. 350.

CARRIER, LIABILITY OF.—*Notice*—1 Will. 4, c. 68—*Place of receiving goods.*—A carrier, whose servant receives goods at any other place than his office, warehouse or other receiving house, where a notice, pursuant to 1 Will. 4, c. 68, is affixed, is not within the protection of the statute whatever the nature of the goods may be, although the requisite notice is affixed in the office where the goods are usually received by him; and therefore where goods so delivered are lost, the carrier is liable as a common carrier at common law (Pollock, C. B., dissentiente). *Hart v. Baxendale*, 20 Law J. (N. S.) Exch. 338.

CARRIERS.—*Liability for felony of servants—Gross negligence—Pleading—New assignment—Replication to plea under Carriers' Act, 1 Will. 4, c. 68.*—The plaintiffs declared against the defendants as common carriers, subject to the terms of a special notice, for the loss of a truss of silk by the gross negligence of the defendants, and the felonious acts of their servants. The defendants pleaded, except as to the gross negligence and felony, that the goods were such as are excepted in the Carriers' Act, and that the defendants did not declare their value. The plaintiff new assigned that he had brought his action, for that the defendants' servants had feloniously stolen the goods. The new assignment was held bad on demurrer, and the plaintiffs were allowed to amend on payment of costs, and to reply that the goods were lost by the felony of the defendants' servants through the gross negligence of the defendants: Held, also, that the allegation of gross negligence of and felony in the declaration was surplusage, and that the replication of felony only, without an allegation of gross negligence, would have been bad. *Butt v. Great Western Railway Company*, 20 Law J. (N. S.) C. B. 241.

CASE.—*Fraud—Action, by whom maintainable.*—A tradesman, who sells an article which he at the time believes to be sound, but which is actually unsound, is not liable for an injury subsequently sustained by a third person, not a party to the contract of sale, in consequence of such unsoundness. A declaration in case by a husband and wife stated that the defendant, who was the maker and seller of certain lamps called Holliday's lamps, sold to the husband one of these lamps, to be used by his wife and himself in his shop, and fraudulently warranted that it was reasonably fit for that purpose; that the wife, confiding in that warranty, attempted to use it; but that, in consequence of the insufficient materials with which it was constructed, it exploded and hurt her. At the trial the jury found that the accident had been caused by the defective nature of the lamp; but that the defendant was ignorant of this unsoundness, and had sold the article in good faith: Held, that the fraud on the part of the defendant having been negatived, the action was not maintainable by the wife, who was not a party to the contract. *Longmeid v. Holliday*, 20 Law J. (N. S.) Exch. 430.

COMPANIES CLAUSES CONSOLIDATION ACT.—7 & 8 Vict. c. 16, ss. 71, 138—*Notice of meeting, validity of.*—Debt for calls. Plea, that the call was not made by any persons having authority on behalf of the company to make it. By the Swansea Dock Act, passed in July, 1847, certain persons were named as directors, who subsequently resolved that the principal place of business should be Swansea. On the 5th of October, at a meeting of some of the directors held in London, it having been then resolved to call an extraordinary general meeting of the company to be held in London, on the 20th of October, a notice was, on the 5th of October, inserted in the third edition of the Sun newspaper, published and circulated in London on that day, and subsequently published in other newspapers, calling a meeting of the company in London on the 20th of October.

At the meeting held on the 20th of October, the directors appointed in July were discharged, others being appointed. By the 71st and 138th sections of the Companies Clauses Consolidation Act, 1845, fourteen days' notice of all public meetings is to be given by advertisement in a paper circulating in the district of the company's principal place of business. There was no evidence to show that the third edition of the Sun newspaper of the 5th of October ever reached Swansea. On the 21st of October, 1847, and the 31st of January, 1848, meetings of shareholders were held at Swansea, when the number of directors was reduced to nine; and on the 10th of February, 1848, three of those directors made the call in question: Held, that, as it was not proved that the Sun newspaper of the 5th of October reached Swansea, the notice was bad, and the meeting of the 20th of October, which discharged the directors by whom the call was afterwards made, was invalid, and consequently the call was good. *Swansea Dock Company v. Levien*, 20 Law J. (N. S.) Exch. 447.

CONTRACT WITHOUT SPECIALTY.—*Limitations, Statute of*—21 Jac. 1, c. 16, s. 3—*Debt for penalty under a bye-law.*—An action of debt for a penalty due under a bye-law made by virtue of a charter, is “an action of debt grounded upon a contract without specialty,” and is barred by 21 Jac. 1, c. 16, s. 3, if not commenced within six years after the penalty becomes due. *Master Warden, Assistants and Fellowship of the Company of Tobacco Pipe Makers v. Loder*, 20 Law J. (N. S.) Q. B. 414.

COPYRIGHT.—*Alien ami resident abroad*—*Work first published in England.*—If an alien ami while resident abroad compose a literary work, and send it to and publish it in England before it be published in any other country, he has, by the statutes 8 Anne, c. 19, and the 54 Geo. 3, c. 156, a right of copyright in such work. If the foreign author be permitted by the law of the place of his domicile to assign his property in the work, and he duly assign it in such place according to such law to another alien ami before publication, the assignee, though resident abroad, will have a like right of copyright if he first publish the work in this country. *Boosey v. Jeffries*, 20 Law J. (N. S.) Exch. 354.

CORPORATE BODY.—*Evidence*—*Contract.*—An incorporate company entered into a contract under seal with A. for the execution of certain works according to the terms of a specification annexed, which also contained provisions for extra work. A. entered upon the work under the superintendence of the company's engineer, and also under such superintendence, and with the approbation of the engineer, executed certain extra works, which, however, could not be considered as coming within the provisions of the contract under seal. A. afterwards made a claim upon the company to a much larger amount than that specified by the contract, and the directors paid him a large sum generally on account. By the 8 & 9 Vict. c. 16, s. 97, the directors of such a company may make parol contracts,

without the same being reduced into writing, where such contracts would, if entered into between private persons, be valid; and, by the 98th section of the same act, the directors are bound to enter minutes of such contracts in a book; and by one of the clauses of the special act of the company, three directors constituted a quorum: Held, that as there was not any evidence that the company had contracted for this extra work under seal, or that they had entered into a contract for the same under the terms of their special act or of any general act authorizing the same, they were not liable to A. for the extra work so performed by him. *Homersham v. Wolverhampton Waterworks Company*, 6 Exch. 137.

COSTS.—1. *Practice—Reg. Gen. Hil. Term, 2 Will. 4, c. 93—Setting off costs.*—The plaintiff, having succeeded upon issues of fact joined upon two counts of the declaration, but judgment having been given upon a demurrer to a third for the defendant, had obtained a rule to show cause why satisfaction should not be entered upon the roll as to the defendant's costs, and those costs be deducted from his own damages and costs, without regard to the lien of the defendant's attorney. The rule was made absolute, and it was held that in such case the defendant's costs were interlocutory costs in the same suit within the meaning of the Rule 93 of Hil. Term, 2 Will. 4, and that the former part of the rule, prohibiting the allowance of any set-off of costs to the prejudice of the attorney's lien, applies only to the case of costs of different suits: *Semble*, per Maule, J., no application to the court was necessary. *Scott v. De Richebourg*, 20 Law J. (N. S.) C. B. 263.

2. *Replevin—Month's notice.*—The 133rd section of the Municipal Corporation Act, 5 & 6 Will. 4, c. 76, which, for the protection of persons acting in the execution of that act, enacts, that "all actions and prosecutions shall be tried in the county, &c., and entitles the defendant, in case of success, to his full costs as between attorney and client, applies to the action of replevin, although one of the provisions of the section, by which a month's notice of action is to be given, is not applicable to that form of action. *Jones v. Johnson*, 6 Exch. 133.

3. *Suggestion—13 & 14 Vict. c. lxxi.—Quære*, whether the London Small Debts Act, the 10 & 11 Vict. c. lxxi., is affected by the 13 & 14 Vict. c. 61, so as to render unnecessary a suggestion on the roll for the purpose of depriving a plaintiff of costs under the provisions of the former act. *Hewitt v. Paterson*, 20 Law J. (N. S.) Exch. 337.

COUNTY COURT.—1. *Clerk—Liability in trespass—Evidence of judge.*—The clerk of a County Court is a mere ministerial officer, acting under section 102 of the 9 & 10 Vict. c. 95, and is not liable in trespass for imprisonment under a warrant reciting a bad order. An order by the judge of a County Court, on a judgment summons on a defendant, to pay a sum on a future day, or to be imprisoned for thirty days, is bad. Minutes of proceedings in the County Court, made under the 9 & 10 Vict. c. 95, s. 111, or a copy of them,

cannot be contradicted by the evidence of the judge. The clerk of a County Court, against whom an action of trespass is brought, may give special matter in evidence under a plea of not guilty by statute, by virtue of the 13 & 14 Vict. c. 61, s. 19. (The case of *Andrews v. Marris*, 1 Q. B. Rep. 3; S. C. 10 Law J. (N. S.) Q. B. 225, distinguished.) *Dens v. Ryley*, 20 Law J. (N. S.) C. B. 264.

2. *Jurisdiction to grant a warrant of possession—Ordinary relation of landlord and tenant not existing.*—The judge of a County Court has no jurisdiction, under the County Court Act, 9 & 10 Vict. c. 95, s. 122, to grant possession of a house and premises to a party who is the owner of them and claims to be landlord, when the occupier is in possession under an agreement for purchase, so that the relation between the parties is not the ordinary relation of landlord and tenant. *Banks v. Rebeck*, 20 Law J. (N. S.) Q. B. 476.

3. *Summoning defendant before order of commitment for non-payment of sum recovered.*—If a defendant in the sheriff's court of London be ordered by the judge to pay the amount recovered against him at a certain time, and he makes default, the judge cannot order him to be committed to prison for nonpayment, unless he be first summoned to show cause why the order of commitment should not be made. In trespass for assault and false imprisonment, the defendant justified under an order made by the judge of the sheriff's court of London, for committing the plaintiff to prison for nonpayment of an amount recovered against him in that court, and ordered to be paid by instalments. The plea first stated the various proceedings in the cause and court necessary to give the judge jurisdiction, except that it did not allege that the plaintiff had been summoned to show cause against the order of commitment being made, but it stated that the judge duly and according to the form of the statute made the order of commitment. The replication averred that the judge did not order the plaintiff to be committed to prison in manner and form as alleged in the plea: Held, that this traverse only put in issue the fact of the order of commitment being made and not its validity, and that it did not put in issue the question whether the plaintiff had been duly summoned. *Buchanan v. Kimming*, 20 Law J. (N. S.) C. B. 252.

COVENANT TO INDEMNIFY.—*Rent—Repairs—Costs.*—B. and P., being the owners of an unexpired term of seventy-two years in certain premises, let them for twenty-one years to G., with the usual covenants for repairs, payment of rent, &c., and afterwards assigned the reversion to B.; G. had previously assigned the remainder of the term of twenty-one years to the plaintiff, with a similar covenant of indemnity, who assigned it to the defendant with a like covenant; B. brought an action in respect of rent due and want of repair against G., who suffered judgment by default, and afterwards brought an action against the plaintiff for the amount so paid by him and his costs. The plaintiff defended the action unsuccessfully, and became liable to pay G. the amount of the judgment by default, together with G.'s costs of that judgment, and also the costs of the action. The

plaintiff then brought an action against the defendant before he had paid to G. the amount recovered by G.: Held, first, that the plaintiff was entitled to recover the amount of the rent, the repairs, and G.'s costs of the judgment by default, but not his own costs of defending the action brought against him by G.; secondly, that the plaintiff was entitled to recover, although he had not paid G. at the commencement of the action; thirdly, that G. had taken the proper course in suffering judgment to go by default. *Smith v. Howell*, 20 Law J. (N. S.) Exch. 377.

CUSTOM TO MEASURE COALS.—*Right to weigh coals by statute—Coal meter officer, not servant of corporation.*—In a special action on the case, the declaration alleged that the corporation of L. had from time immemorial, up to the 1st of January, 1836, by persons deputed and appointed by them, the sole and exclusive privilege of measuring, and from the 1st of January, 1836, of weighing all coals imported into the port of L. It then set out a like right, at the pleasure of the corporation, to fix and determine a reasonable rate of payment for the labour of the coal meters, to be proportioned previous to the said 1st of January, 1836, to the measured quantity of the coals, and subsequent to that day to their weight, the payments being to be made by the coal owner and to be for the use and benefit of the coal meter. It then averred that the corporation had deputed and appointed a reasonable number of coal meters, of whom the plaintiff was one. The pleas traversed the right of the corporation to weigh the coals, and the appointment of the plaintiff as a coal meter. Evidence was given of a custom of measuring all coals imported into the port of L. before the 1st of January, 1836, and that after that date, the corporation ordered that the coal meters should be paid a sum per ton on the coals weighed instead of per chaldron as before, and that subsequent to the 1st of January, 1836, the coal meters had weighed the coals instead of measuring them. In proof of the plaintiff's appointment, an entry in the corporation books stating that he was appointed a coal meter, was put in. The entry was in the form always made respecting the appointment of coal meters. There was no evidence of any appointment of the plaintiff under the seal of the corporation. The plaintiff had acted as a coal meter for many years: Held, that the right of the corporation by custom, by means of their deputies, to measure all coals imported into the port, was not converted into a right to weigh them by the state 5 & 6 Will. 4, c. 63: Held, also, that as the coal meter claimed fees for his own benefit by the custom, he was an officer, and not a mere servant of the corporation, that the appointment therefore ought to have been under the seal of the corporation, no custom being alleged of appointing such an officer without a deed. *Smith v. Cartwright*, 20 L. J. (N. S.) Exch. 401.

DEBT ON BOND.—*Conditions—Replication—Repayment of stock and sums in lieu of dividend—Damages on one breach only.*—Debt on bond, dated the 5th of December, 1812, the conditions of which recited that J. B. had agreed to advance J. W. the produce of the sale of 877l. 4s. 1d. five per cent. stock, without any advantage

other than he would have been entitled to if the stock continued in his own name in the books of the Bank of England. That J. B. sold the stock and paid the produce, 729*l.* 4*s.* to J. B., and that it had been agreed between them that the same, or a like sum of 877*l.* 4*s.* 1*d.* five per cent. stock, should be replaced and transferred to J. B. The condition then stated that if J. W., before the 5th of June then next ensuing, purchased the said amount of stock, and transferred the same to J. B., and paid to J. B. in lieu of the dividends thereof such sum as J. B. would have been entitled to receive for the dividends of the same in case the same had continued in his name, at such time and times, in such shares and proportions, and in such manner as the same dividends would have been payable to him if the same had not been sold, then the bond was to be void; otherwise to remain in force. Breach, first, that J. W. did not, before the said 5th of June, nor at any time since, purchase the said amount of stock and transfer the same to J. B. or the plaintiff as administrator. Secondly, that the dividends of the said stock, if the same had continued standing in the name of J. B., would have been payable half-yearly after the date of the said bond, and the first and only one of such dividends before the said 5th of June would have been payable on the 5th of January, 1813, that J. B., on the 11th of September, 1824, died, and that if the said stock had continued standing in J. B.'s name, or the plaintiff's as administrator, a sum, to wit, &c., would have been payable half-yearly as dividends, and the money payable in lieu of such dividends, and becoming due after J. B.'s death, amounted to a large sum, to wit, &c. And although the said stock had not been transferred into the name of J. B. or the plaintiff, yet the said J. W. and the defendants had wholly failed to pay the sums which became due in lieu of the said several dividends. Plea, that the causes of action did not accrue at any time within twenty years next before the commencement of the suit. Replication, so far as relates to the first breach, that whilst the stock remained untransferred, and a certain sum, to wit, &c., was due, in lieu of the dividends which J. B. would have been entitled to receive, to wit, on the 10th of September, 1824, J. W. made an acknowledgment that the said stock remained untransferred, contrary to the said condition, and was due thereon by J. W. making to J. B. satisfaction on account of part of the said sum of money, to wit, of 10*l.*, and that the action was brought within twenty years next after such acknowledgment; and so far as related to the other causes of action in the declaration mentioned, that the said causes of action did accrue within twenty years next before the commencement of the suit. Rejoinder as to the first part of the replication, a traverse of the bringing of the action within twenty years, *modo et formâ*. An agreement between J. B. and J. W. was proved, by which J. B. was to be boarded and lodged by J. W. for half-a-guinea a week, and that this weekly sum should go and be accepted in part satisfaction of the dividends of the stock due from J. W., and that they were to have a settlement every six months. This agreement appeared to have been acted upon until J. B.'s death, on the 11th of September, 1824, down

to which time he boarded and lodged with J. W., but no settlement had taken place between them, although repeatedly asked for by J. B.: Held, first, that supposing the issue raised by the rejoinder cast upon the plaintiff the burthen of proving an acknowledgment within twenty years next before the commencement of the action, the above was sufficient evidence to entitle the plaintiff to the verdict on that issue, as also on the second issue raised by the replication. Secondly, that the bond in addition was not within the 5th section of the 3 & 4 Will. 4, c. 42, that the replication, therefore, as to the first breach, set up no answer in law to the plea, and the plaintiff, consequently, was not entitled to any damages on that breach; but as to the second breach, thirdly, that the part of the condition which stipulated for the payment from time to time of such sums as would have been payable by way of dividends if the stock had continued standing in J. B.'s name, a cause of action still existed, and, therefore, the plaintiff was entitled to judgment; the damages to be confined to those claimed in the second breach. *Blair v. Ormond*, 20 L. J. (N. S.) Q. B. 444.

DEED.—13 *Eliz. c. 5*—*New trial*—*Costs, payment of.*—The plaintiff having executed a deed in the name of "J. James," his real name, and being described in the body of the deed as "J. James," but with the proper description and address added: Held, that the property passed to him, and the jury were warranted in so finding. An assignment to a trustee for the benefit of creditors, which empowers the trustee to employ the debtor or other person "in winding-up his affairs and collecting and getting in his estate, and carrying on his trade," is not void as against creditors, within 13 *Eliz. c. 5*, if it appears from the deed that the main object is to wind up the business for the benefit of the creditors, and not to carry on the trade with a view to future profits; *Owen v. Body* distinguished. There is no difference between interpleaded issues and other actions, as regards the terms upon which rules for a new trial will be granted, where the verdict is against the evidence. Therefore, where the first verdict was owing to the miscarriage of the jury, a rule was made absolute for a new trial upon payment of costs. *James v. Whitbread*, 20 L. J. (N. S.) C. B. 217.

2. Construction of—Common recovery—Settlement of estates—Voluntary conveyance.—J. T., the grandfather of the plaintiff, under a deed of September, 1790, was tenant for life of a moiety of certain estates called C., with remainder to his wife for life, with remainder to his first and other sons successively in tail male, with remainder to his daughters as tenants in common in tail general, with remainder to the settlor in fee. J. T. had issue several children; J. C. T., his eldest son, and the father of the plaintiff, becoming of age in 1815. In the same year J. T., his wife, and J. C. T. joined in suffering a common recovery; and by indentures of lease and release, of the 17th and 18th of March, 1815, J. T., his wife, and J. C. T. being parties to the release, after reciting that J. T., his wife, and J. C. T. were desirous of declaring the uses of the said recovery, and that J. T. was

desirous of settling his estate in fee to the uses thereafter declared, it was witnessed, that, for effecting such intent and purpose, and for divers other good and valuable considerations, and for a nominal consideration therein expressed, the uses of the said recovery should enure to the use of the said J. C. T. and his heirs during the life of J. T., remainder to J. T.'s wife for life, remainder to J. C. T. for life, remainder to his first and other sons in tail male, remainder to J. T.'s younger son E. T. T. for life, and to his first and other sons in tail male, remainder to J. T.'s daughter M. T. for life, and to her first and other sons in tail male, with several other remainders to unborn children, and the ultimate remainder to J. T. in fee. J. T. was a trader subject to the bankrupt laws, and the said recovery and lease and release were made with the intent on his part to defraud his creditors, but J. C. T. was not in any way privy to such intent. In June, 1815, J. T. was duly declared a bankrupt; and by an indenture of the 11th of July, 1816, a conveyance of all his estate was made to the assignees in bankruptcy. In July, 1819, at the suit of the assignees, the Court of Chancery directed an issue at law to try the validity of the recovery and the deed of March, 1815, and the jury found that they were fraudulent and void as against the creditors of J. T. A decree to the same effect was subsequently made, and possession ordered to be given to the assignees; and in March, 1821, it was further decreed, that the deed should be delivered up to be cancelled, which was done. In 1821 the assignees sold the estate to J. C. T. for 80,000*l.*, and a recovery was thereupon suffered; and by indentures of lease and release, in 1823, the uses of such recovery were declared. Before 1843 J. T. and his wife died, and in April, 1849, J. C. T., for a large sum of money, sold and conveyed the estate in question to the defendant in fee: Held, first, that the recovery and deeds of the 17th and 18th of March, 1815, were clearly fraudulent and void within the 13 Eliz. c. 5, as against J. T.'s creditors, and that no interest in J. T.'s estates ever passed to J. C. T. under them; secondly, that the 4th section of the 13 Eliz. c. 5, had not the effect of making the recovery in 1815, though fraudulent as against the creditors of J. T., valid as respected the uses declared in the same deeds by J. C. T. of his own previous estates in remainder, although the recovery was still to be treated as unreversed, and subsisting as a recovery; thirdly, that the deeds of the 17th and 18th of March, 1815, could not be considered as still subsisting and valid as to the uses declared to J. C. T. for life, with remainder to his son, the plaintiff, in tail male; but that all the uses thereby declared were void, and thereupon the recovery by construction of law enured to the use of J. T. for life, and to J. C. T. in fee; fourthly, that supposing the deeds were not altogether void, and that J. C. T. became tenant for life under the uses declared by them, with remainder to the plaintiff in tail male, still, as no consideration for his suffering the recovery ever existed, such uses must be considered voluntary; fifthly, that the sale and conveyance in 1849 to the defendant for valuable consideration, was to be considered as making void the uses in the vo-

luntary deed of the 18th of March, 1815, under the 27 Eliz. c. 4, and the recovery as thereupon enuring to give J. C. T. a remainder in fee, after the death of J. T. and his wife, which passed to the defendant; and therefore, either on the ground of the deed of the 18th of March, 1815, being wholly vitiated by the fraud of J. T., or its being voluntary as to the uses declared by J. C. T., the plaintiff had not any interest in the moiety of the estates in question. *Tarleton v. Liddell*, 20 Law J. (N. S.) Q. B. 507.

EASEMENT.—*Light—Enjoyment for twenty years—Parol agreement*—2 & 3 Will. 4, c. 71, s. 3.—If the occupier of a house pay rent under a parol agreement to the owner of the adjoining land for the liberty of keeping windows open looking upon the lands, the occupier of the house will, after twenty years enjoyment of the light, acquire the right to such enjoyment, and the owner of the land cannot after that period obstruct such light, as the payment of the rent is not an interruption of the enjoyment under the stat. 2 & 3 Will. 4, c. 71, s. 3. *Plasterers' Company v. Parish Clerks' Company*, 20 Law J. (N. S.) Exch. 362.

EJECTMENT.—1. *Action for mesne profits—Consent rule—Estoppel.*—Where, in an action for mesne profits, it appeared that the defendant had been made defendant in the former action of ejectment, under section 13 of 11 Geo. 2, c. 19, upon entering into the consent rule as mortgagee and landlord: Held, that he was estopped from denying that he was landlord of the premises. *Doe v. Challis*, 20 Law J. (N. S.) Q. B. 478.

2. *Adverse possession*—3 & 4 Will. 4, c. 27, s. 2—7 Will. 4 & 1 Vict. c. 28—*Mortgagor and mortgagee.*—In 1822 W., a lessee for years of certain premises (including Greenacre), mortgaged them for the residue of the term to B. G. In 1834 the mortgage was paid off by R. C., who took an assignment of the legal interest of the mortgagees, and at the same time purchased the equity of redemption of W. In 1838 the premises were sold by the executors of R. C. to W. F. In 1846 the same premises were assigned by the executors of W. F. to R. B., one of the lessors of the plaintiff, and in the same year they were mortgaged by R. B. to A. W., the other lessor of the plaintiff. In 1829 the defendant took a lease of part of the premises contiguous to Greenacre of W. for twenty-one years. Soon afterwards he applied for a lease of Greenacre, but W. refused, alleging that he had granted a right of way over it to persons to whom he had sold houses in an adjoining square; he at the same time told him that if he took possession of it, it must be at his own risk, but that if he did he would not interfere. The defendant then took possession of it, and built a workshop on it. In 1850 the lease of the demised premises having expired, the defendant surrendered them to the plaintiffs, but refused to give up Greenacre. In an action of ejectment to recover Greenacre: Held, first, that it could not be considered as forming part of the demised premises in respect of which rent was paid, and that as there had been no rent paid, or any acknow-

ledgment given, the statute 3 & 4 Will. 4, c. 27, s. 2, would be a bar as against W. or those claiming under him other than a mortgagee; secondly, that although the mortgage of 1822 had been paid off, the lessors were "parties claiming under a mortgage," within the meaning of 7 Will. 4 & 1 Vict. c. 28, and therefore entitled to recover. *Doe d. Baddeley v. Massey*, 20 Law J. (N. S.) Q. B. 434.

3. *Writ of restitution*.—If a judgment in ejectment be irregularly obtained, and possession delivered under it, and then the judgment be set aside, the court will, in the first instance, grant a rule requiring possession to be restored; but if such rule become ineffectual by reason of the party on whom it is to be served having absconded, a writ of restitution will be awarded. *Semble*, it is not necessary that a writ of restitution should be founded upon matter of record. *Doe d. Whittington v. Hards*, 20 Law J. (N. S.) Q. B. 406.

EVIDENCE.—*Issue—Right of common*.—On an issue taken upon liberum tenementum, the question being whether the locus in quo was parcel or no parcel of an estate purchased by and conveyed to an ancestor of the alleged freeholder, an agreement preliminary to the conveyance, and in which the locus in quo was expressly named as part of the land to be sold, is not admissible evidence for the purpose of showing what was conveyed. *Semble*, that on an issue whether the occupier of close I. had an appurtenant to it, right of common in a tract called M., the party asserting such right cannot give in evidence the verdict in an action between strangers to the depending suit, where the issue was whether the occupier of B., another close belonging to the owner of I., had a right of common in M., and the jury found for the commoner. *Williams v. Morgan*, 15 Q. B. 782.

EXTENT.—*Bond to the crown—Power of appointment*.—If a party has an estate in lands and also a power of appointment for his own benefit, he cannot, after entering into a bond to the crown, divest the right of the crown to extend the lands for the bond debt by executing the power of appointment in favour of a bona fide purchaser without notice. *Ellis v. Reg.*, 20 Law J. (N. S.) Exch. 348.

FACTORY ACT.—7 & 8 Vict. c. 15, s. 21—*Arrest of judgment—Machinery not in operation*.—By the 7 & 8 Vict. c. 15, s. 21, it is enacted, that every fly-wheel directly connected with the steam engine, &c., and every part of a steam engine, &c. near to which children or young persons are liable to pass or be employed, and all parts of the mill gearing, shall be securely fenced, and the said protection to each part shall not be removed while the parts required to be fenced are in motion by the action of the steam engine, water wheel or other mechanical power for any manufacturing process: Held, first, that under this section the machinery was to be kept fenced with reference as well to full grown as to young persons and children; secondly, that the protection was to be preserved only while the machinery was in motion for a manufacturing purpose. A declaration in case stated that the defendants were proprietors of a building in which steam power was used to work machinery employed in

manufacturing cotton, and in part of which said building there was certain mill gearing, being a shaft which was worked and put in motion by the said steam power. It then alleged that the defendants disregarding their duty did not keep the said shaft securely fenced, against the form of the statute, by which the plaintiff received an injury, &c. The plaintiff having obtained a verdict in respect of such injury: Held, that the judgment must be arrested, as the declaration did not show that the machinery at the time when the injury was inflicted was in operation within the 7 & 8 Vict. c. 15, s. 21; that it was consistent with its allegations, that the shaft might have been unfenced, having been uncovered for some other purpose, as for being cleaned or repaired. *Coe v. Platt*, 20 Law J. (N.S.) Exch. 407.

FRIENDLY SOCIETY.—*Jurisdiction*—*Weekly allowance*.—The rules of a friendly society, established in 1817, were duly made and confirmed at quarter sessions, under statute 33 Geo. 3, c. 54. Afterwards some new rules were made; but they were neither made nor confirmed in the manner required by sect. 3 of the statute. One of such new rules altered the amount of entrance money, and another the amount of weekly allowance to sick members. A sick member, who had entered the society since the making of the new rules, and had occasionally received relief under them, summoned the stewards to petty sessions for nonpayment of a weekly allowance under the new rules. The justices dismissed the complaint on the ground that the old rules had been abandoned, and that the new rules were void, and that the society, therefore, was no longer within the statute, so as to give the justices jurisdiction: Held, that, the new rules being void, the old rules were not affected by them, and that the justices had jurisdiction to order payment of a weekly allowance under the old rules, and this, though the specific claim made by the summons was under the new rules; and the court made a rule absolute, under stat. 11 & 12 Vict. c. 44, s. 5, requiring them to hear and determine the case. *Reg. v. Cotton*, 15 Q. B. 569.▲

GRAMMAR SCHOOL ANNEXED TO CATHEDRAL.—*Visitor, jurisdiction of*—*Cause of removal, validity of*—*Mandamus*.—By the statutes of the cathedral of R. it was provided that the head master of a grammar school annexed to the cathedral should be appointed by the dean and chapter of R., and it was also ordained that “if any of the minor canons, clerks, or other officers, should commit a slight offence, he should be corrected by the dean; but if his offence were more grave (in case it were thought fit to do so), he was to be expelled by those by whom he was appointed.” By another clause a general power was given to the bishop of R. in all matters contained in the statutes or otherwise, concerning the benefit or credit of the cathedral, to oblige the dean, the canons, minor canons, and the other officers, and each and every of them, by oath, to speak the truth about all crimes and offences whatever, and to promote and reform such as should be proved according to the measure of the offence, and to do all things which should appear necessary for the eradication of vice,

and whatever is recognized as appertaining to the office of a visitor : Held, that, upon the construction of these statutes, the bishop of R., and not the dean and chapter, was visitor in matters not relating to the school. To a mandamus commanding the dean and chapter of R. to restore a head master whom they had removed from his office, the return set out the statutes, and stated that the prosecutor had not appealed to the Bishop of R. The prosecutor pleaded that the bishop of R. was formerly dean of W., and that the cause of removal of the prosecutor from his office of head master was the publishing by him of a pamphlet alleging a misapplication of the funds of the cathedral of R. by the dean and chapter of that cathedral, and attributing to the dean and chapter of W., during the time when the bishop of R. was dean of W., the same identical misapplication of the funds of the cathedral of W. as were imputed to the defendants with respect to the funds of the cathedral of R.; and that the said pamphlet was published with the intention of imputing to the bishop of R. a knowledge of the misapplication of the funds of the defendants, as well as a community of actions and proceedings with the defendants; that the defendants had declared under their common seal that they had removed the prosecutor in consequence of his having published in the said pamphlet libellous passages, directed as well against the defendants as against the bishop of the diocese, and against the deans and chapters of other cathedrals; that, by reason of the premises, the bishop of R. had such an interest in the cause of removal of the prosecutor as disqualified him from acting as visitor. On demurrer to this plea : Held, that the bishop had no interest in the inquiry as to the propriety of the removal, so as to prevent his jurisdiction as visitor from attaching. The prosecutor also pleaded, that the dean and chapter removed him from his office on account of his publishing the said pamphlet; that they afterwards gave him notice that they had restored him; and afterwards the said dean and chapter adjudged that he had been guilty of a grave offence in publishing the same pamphlet, and again removed him under the powers in the statutes contained; and that there never was any cause for his removal other than publishing the said pamphlet. On demurrer to the plea : Held, that the publication of the pamphlet might amount to a graver offence within the meaning of the statute, so as to give the dean and chapter jurisdiction to remove for that cause, and that the bishop of R. alone had power to decide whether the removal was in fact rightful or not; and that the mandamus could not be supported. *Reg. v. Dean and Chapter of Rochester*, 20 Law J. (N. S.) Q. B. 467.

INSOLVENT ACT (INDIA), 11 Vict. c. 21, s. 6.—*Schedule—Bills, description of.—Insufficiency of.*—Bills of exchange, drawn by the defendant in India, were purchased there for the plaintiff, Moses Symons, who resided in England, and were indorsed, and transmitted to him in this country. The defendant afterwards petitioned the Insolvent Court in India, and in his schedule described the plaintiff's debt thus, "Creditor, A. M. Symons for the following bills of exchange (describing them), drawn by us upon Messrs. R. I.

& Co. in favour of Moses Symons." A person named A. M. Symons resided in Calcutta, but was not shown to be connected with the bills in question: Held, that the description in the schedule was insufficient, within the meaning of the 11 Vict. c. 21, s. 5, sched. (C.), the Insolvent Act (India), and therefore that the defendant was still liable on the bills. *Symons v. May*, 20 Law J. (N. S.) Exch. 414.

INNKEEPER.—*Non-liability of—Gross negligence of guest—Evidence.*—The plaintiff, a commercial traveller, whilst a guest at an inn, placed his gig box in the commercial room, as was the practice with travellers frequenting the inn. The box contained money, and was allowed to remain in the commercial room in the night time, during the plaintiff's three days stay at the inn. The lock of the box was a very insecure one, and could be opened without a key by pushing back the bolt. On two or three occasions the plaintiff opened the box in the room and counted the money it contained in the presence of several persons: Held, that the jury were properly directed that gross negligence on the part of the plaintiff would relieve the innkeeper from his common law liability; and that on the above evidence the jury were warranted in finding that the plaintiff had been guilty of gross negligence, and the defendant therefore entitled to the verdict on the plea of not guilty. *Armistead v. White*, 20 L. J. (N. S.) Q. B. 524.

LAND-TAX.—*Waterworks Company—Liability in respect of pipes.*—A water company which has laid pipes in a land-tax division under a statutory power in that behalf, but which is the owner of no land within the division, is not assessable there to the land-tax, the right in question being in the nature of an easement, and not "land" or "hereditament." *Chelsea Waterworks (Governor and Company of) v. Bowley*, 20 L. J. (N. S.) Q. B.) 520.

LANDLORD AND TENANT.—*Pleading—Immaterial issue.*—A declaration stated that the defendant had become and was tenant to the plaintiff of a farm, upon the following among other stipulations,—that the defendant should not sell any hay, straw, &c. grown upon the said farm without the licence of the landlord, under a specified penalty; and that the said penalty so made payable should be considered as additional rent, and recoverable by distress or otherwise as rent; and that in consideration thereof the defendant promised the plaintiff that he would pay all such penalties as he might be liable to pay according to the said stipulations for or in respect of any hay, straw, &c. which should be grown on the said farm, and sold by the defendant without the licence of the landlord. Averment, that the defendant, without the licence of the plaintiff, sold divers quantities of straw grown on the said farm during the last year of the said tenancy, whereby the defendant became liable to pay the said penalty. Breach, that he had not paid. Plea, that the said straw so alleged to have been sold was sold by the defendant after the determination of the said tenancy, and not otherwise. On special demurrer to the plea, Held, by Lord Campbell, C. J., and Patteson, J., dissentiente

Erle, J., that the plea raised an immaterial issue, and was no answer to the action. *Massey v. Goodall*, 20 Law J. (N. S.) Q. B. 526.

Tenancy at will—Insolvency—Vesting order—Notice.—Where a party having created a tenancy at will afterwards becomes insolvent, the vesting order and notice thereof to the tenant at will operate as a determination of the tenancy. *Doe d. Davies v. Thomas*, 20 Law J. (N. S.) Exch. 367.

LANDS CLAUSES CONSOLIDATION ACT.—1. 8 & 9 Vict. c. 18.—*Costs.*—The 68th section of the Lands Clauses Consolidation Act, 8 & 9 Vict. c. 18, by which any party entitled to compensation in respect of lands taken or injuriously affected by the execution of works may give notice of his claim to the promoters, and the claimant may have the matter settled by a jury, incorporates all previous sections which are applicable, and among others the 38th, which requires the promoters to give notice of the amount of compensation they are willing to pay before summoning the jury, and also the 51st, which gives the claimant the costs of the inquiry when he recovers more than the sum offered by the promoters. (Conflicting with *Railstone v. The York, Newcastle and Berwick Railway Company.*) *Richardson v. South-Eastern Railway Company*, 20 Law J. (N. S.) C. B. 236.

2. *Railway—Obligation to complete railway.*—Where a railway company is called upon by a landowner, over whose land their line is authorized to be made, but to whom no notice requiring his land has been given, to proceed to complete their railway, and to purchase the land necessary for the purpose, it is no answer to a rule for a mandamus for that purpose, that the period prescribed for the exercise of the powers of compulsory purchase by the company has nearly expired, unless it is also shown that it is impossible for them to take the initiatory steps towards purchasing the land in question. *Quere*, how far there is legal obligation upon a railway company, who have obtained an act of parliament authorizing them to construct the line of railway over certain lands, to make and complete their railway. *Reg. v. York, Newcastle and Berwick Railway Company*, 20 Law J. (N. S.) Q. B. 503.

LEASE FOR LIVES.—*Parish register—Evidence of death.*—Ejectment in 1849, by reversioner, for premises demise in 1801 for three lives and twenty-one years. Two of the cestui que vies had died before 1828. No witness was called who had ever known the third; and, except the mention of him in the lease (which described him as aged ten years), there was no proof that he had ever existed. No evidence of search for him was given: Held, that to raise the presumption of his death, there should have been evidence that he had not been heard of by those persons who would naturally have heard of him had he been alive, or that search had been ineffectually made to find such a person; and that the mere fact that no witness called had heard of him was not sufficient: Held, also, that an entry in the parish book, kept at the parish church, of a burial in the work-house cemetery within the parish, was evidence of the death of the

person named, though it appeared that the incumbent sanctioned the entries in the book on the faith of statements made by others, and not from his personal knowledge of the burial. *Doe v. France v. Andrews*, 15 Q. B. 756.

LEGACY DUTY.—*Deed—Revocation of former deeds*—55 *Geo. 3, c. 184.*—Lord E. and his son, by a deed of 1800, conveyed to trustees certain real estates to the use (subject to a term to secure a rent-charge of 2000*l.* to the son during their joint lives) of Lord E. for life, with remainder to the son for life, with remainder to the first and other sons of the latter in tail, with remainders over; with a joint power to revoke such uses and declare others. By a deed of 1814 they executed the power. This deed recited, that Lord E. was not possessed of personal estate sufficient, in the event of his death, to discharge all the debts he might probably owe, and such legacies as he might bequeath, without a sale of his family and other pictures, plate, and other articles of a similar nature; and that therefore the son had agreed, for the accommodation of Lord E., to join him in charging the said lands with a sum of 50,000*l.*, to be raised after the death of Lord E. and applied in augmentation of his personal estate; and that Lord E. had agreed in charging the estate with 20,000*l.*, to be raised after his death, for the use of his son; and that it was agreed that the pictures, &c. should be assigned to trustees. The deed then contained a revocation of the former uses; and it was thereby directed that the said estates should be and remain to the use of the trustees, in trust, (inter alia,) within six months after the death of Lord E., to raise by sale such sum not exceeding 50,000*l.* as should be necessary to make good the deficiency of the personal estate of Lord E. in payment of his debts and legacies, and in aid of the same. The estates were then settled as before to the use of Lord E. for life, with remainder to his son and his issue, with remainder in undivided third parts to Lord E.'s three daughters, Lady S., Lady C., and another daughter, for their lives respectively, with remainder to their sons in tail; and Lord E. assigned all his pictures, furniture, &c. to trustees, to go, for the most part, as heir looms. Lord E., by his will, gave, amongst other legacies, to his executors two sums of 10,000*l.* each, in trust for his daughter Lady S. (the wife of Lord S.), the same to be subject to her appointment. The son died without issue in the lifetime of his father, whose personal estate, after his death, was not sufficient for the payment of his debts and legacies, without a part of the said sum of 50,000*l.*, out of which it was necessary to provide for payment of the legacies to Lady S. Common recoveries were suffered, and the estates tail in the lands thereby barred, and partition was made, one share being limited to such uses as Lady S. and her husband, and their eldest son, or the survivors of them, should jointly appoint; and it was agreed that, instead of raising the legacies, they should be charged upon the estate in proper proportions. The sums apportioned to the lands taken by the other daughters and their sons were at once paid to the trustees, leaving a large amount to be charged, and which was charged on Lady S.'s own share of the

estates so limited as aforesaid, the same being secured by means of a term created for the purpose, and vested in the trustees. Lady S., by virtue of the power in her father's will, appointed by deed the sums received by the trustees on account of her legacies to her husband, and directed that the residue should be paid to such person as she should thereafter appoint, and, in default of appointment, then to her husband; and she died without having made any further appointment. Lord S. and his son, by deed, conveyed the estates, subject to the said term, to the use of themselves and the survivor in fee. On the death of Lord S. his son became seised of the said estates, and as residuary legatee of his father entitled to the residue of the legacies charged thereon; and he called upon the trustees to surrender the estates, in lieu of selling it to realize the amount charged upon it. This was done, and thereby the demand of the trustees became extinguished; and that extinguishment took place before the 8 & 9 Vict. c. 76: Held, that legacy duty was payable upon all the legacies, under the 55 Geo. 3, c. 184; that the 50,000*l.* stipulated for by the testator as a fund for the payment of his debt and legacies was personal estate; and that the fact that the legacy, and the land upon which the legacies were charged, had devolved upon the same person, whereby it became unnecessary for the trustees to realize the money by the sale of the land, was equivalent to a satisfaction of the legacies within the meaning of the schedule, part 3, of that act. *Attorney-General v. Metcalfe*, 6 Exch. 26.

LIMITATION ACTS.—3 & 4 Will. 4, c. 27—7 Will. 4 & 1 Vict. c. 28—*Mortgagor and mortgagee*—*Time when action may be brought.*—The 7 Will. 4 & 1 Vict. c. 28, is not confined to cases where the mortgagor has been in possession of the mortgaged premises, but its object was to protect mortgagees generally, and to make mortgages an available security wherever they are valid in their inception, and the mortgagee having received payment of his interest cannot be charged with any laches. A., in 1821, became entitled to the possession in fee-simple of real property of which he had never been in actual possession, but which had been occupied by the defendant as tenant at will to him for more than twenty years before action brought. In 1823 A. mortgaged the property to B., who afterwards assigned the mortgage to the lessor of the plaintiff. A. had paid interest upon this mortgage within twenty years before the action was commenced, but had done so without the knowledge of the defendant: Held, that under these circumstances the 7 Will. 4 & 1 Vict. c. 28, applied, and that the lessor of the plaintiff having brought his action within twenty years next after the last payment of interest upon the mortgage was not barred, although more than twenty years had elapsed since the time at which the right to bring such action had first accrued. *Doe d. Palmer v. Eyre*, 20 Law J. (N. S.) Q. B. 431.

MANDAMUS TO HEAR A COMPLAINT WHICH HAS BEEN DISMISSED.—*Exercise of jurisdiction.*—By a private act deputies are to be elected by the freemen of L., and, if the election of any deputy is disputed, the deputies are to decide at

their next meeting on the validity of the election, before which meeting the party questioning the right of the sitting deputy is to give or deliver four days notice in writing unto such deputy. A. and B. were elected deputies, and their elections were disputed. At the next meeting of the deputies, evidence was given that notice was left in due time with A.'s wife. The deputies decided that personal service was requisite, and refused to inquire further into A.'s election. Evidence was given of personal service on B. in due time. The deputies decided that there had not in fact been service on B., and refused to inquire further into B.'s election. On motion in each case for a mandamus to the deputies to hear and decide on the merits of the election, Held, that the deputies having in A.'s case erroneously decided that personal service was a preliminary to exercising their jurisdiction, what they had done was a refusal to exercise the jurisdiction, and the rule was made absolute: but held, that in B.'s case the deputies had exercised their jurisdiction, by deciding on the fact whether notice was given or not, and the rule was discharged. *Reg. v. Freeman of Leicester (Deputies of)*, 15 Q. B. 671.

MARINE INSURANCE.—*Loss, total or partial—Bottomry bond.*—A cargo of wheat was insured from O. to L., and the vessel was damaged and repaired, and vessel and cargo were hypothecated for repairs by a bottomry bond, and afterwards the vessel was wrecked and towed into the port of C. by salvors. The cargo was damaged, but part of it could have been dried and conveyed in a merchantable condition to L., the port of discharge. Proceedings were taken in the Admiralty Court, and a sum was awarded on the bottomry bond, and another sum for salvage: Held, that in determining whether it was "practicable" to send the whole or part of the cargo to its place of destination in a marketable state, the jury ought to have ascertained the costs of the unshipping, drying, warehousing and transhipping the cargo into a new bottom; the cost of the difference of transit to the port of discharge, if it could be only effected at a higher price than the original rate of freight; and the amount of the salvage in proportion to the value of the cargo saved; that the loss would have been total, if the aggregate of those items had exceeded the value of the cargo at L.; but if the aggregate would not have exceeded the value of the cargo or the part saved, then the loss would have been only partial: Held, also, that the sum paid to the parties entitled under the bottomry bond, and their costs in the admiralty court, could not be taken in account. *Rosetto v. Gurney*, 20 Law J. (N. S.) C. B. 257.

OUTLAWRY.—*Judgment of waiver—Variance.*—In a writ of error brought to reverse a judgment of waiver against a woman, the judgment was called a judgment of outlawry: Held, upon plea of nul tiel record, that this was a fatal variance, and that the defendant in error was entitled to judgment. *Burnett v. Phillips*, 20 Law J. (N. S.) Exch. 337.

PARTICULARS OF DEMAND.—*Variance.*—The plaintiff's

particulars of demand claimed "one year's salary, from the 1st of June, 1850, to the 1st of June, 1851, at the rate of 200*l.* per annum, or damages for the dismissal of the plaintiff before the end of the year." The jury having negatived any employment for a year, Held, that the plaintiff was entitled to recover under the above particulars, and upon a count for work and labour, for work actually done by him during the year as servant to the defendants. *Harris v. Montgomery*, 20 Law J. (N. S.) C. B. 221.

PLEADING.—*Bankruptcy*—*Withdrawal of summons, meaning of.*—*Assumpsit.* The declaration stated that before, &c., one W. was indebted to the plaintiff in 236*l.* 14*s.*; that the plaintiff, according to the provisions of the Bankrupt Law Consolidation Act, 1849, had filed an affidavit in bankruptcy against W., and had caused a summons to be issued out of the Court of Bankruptcy, by which W. was required to appear before the said court, for the purpose of ascertaining whether he admitted the plaintiff's demand or had a good defence; and which summons was pending at the time of the defendant's promise, and capable of being enforced; that in consideration that the plaintiff would withdraw the said summons out of the court, the defendant promised and guaranteed to pay the plaintiff the sum of 236*l.* 14*s.* Averment, that the plaintiff withdrew the summons out of the Court of Bankruptcy, of which the defendants had notice. Breach, nonpayment of the 236*l.* 14*s.* Plea, that the defendants had not notice that the plaintiff had withdrawn the summons: Held, on general demurrer, that the words "withdrawn the summons," meant the taking of some step whereby W. might be exonerated from attending the court, which must be by making some communication to him on the part of the plaintiff; or that it meant the taking some step in the Court of Bankruptcy; in either of which cases notice was not necessary, and therefore that the plea was bad. *Alhusen v. Prest*, 20 Law J. (N. S.) Exch. 440.

POLICY OF INSURANCE.—*Deed-poll*—*Absolute covenant*—*Liability of incorporated company.*—Debt to recover 300*l.* as for a total loss under a deed-poll or policy of insurance, sealed with a common seal of the company (the plaintiffs in error). The declaration set out the policy, which, after reciting that the said M. Kearney had represented that he was interested in or duly authorized as owner, agent or otherwise, to make the insurance thereafter mentioned with the said company, and had covenanted to pay a certain premium, stipulated amongst other things that it was agreed by and on behalf of the company that the capital, stock and funds of the said company should, according to the provisions of the deed of settlement of the said company, be subject and liable to make good, and should be applied to pay and make good, all such losses and damages as might happen to the subject-matter of the said policy in respect of the sum of 300*l.* insured, which insurance was thereby declared to be upon cargo, goods or freight (valued at interest) of and in the good ship *Mary*, whereof Noonan (the other defendant in error) was master; that the capital, stock and funds of the company

should alone be liable, according to the deed of settlement, to make good all claims and demands whatsoever under or by virtue of the said policy; and that no shareholder of the company should be in anywise liable to any claims and demands, nor be charged by reason of the said policy beyond the amount of his shares in the capital, stock of the company. It was then averred that the defendants (the plaintiffs in error) became insurers for 300*l.* upon the freight of the said vessel; that divers goods had been shipped on board the said vessel to be carried for freight, and that from thence until the happening of the loss, the plaintiffs (the defendants in error) were interested in the goods so shipped: Held, first, that there was an absolute covenant on the part of the company to pay the sum insured when a loss should happen; and that it was not necessary to aver in the declaration that the capital, stock and funds were sufficient according to the deed of settlement, the want of funds being a matter to be pleaded on the part of the company, if a defence at all; secondly, that an action of debt was maintainable; thirdly, that Noonan was sufficiently designated in the deed-poll as a party interested with whom the company contracted, to entitle him to join as a plaintiff in the action. *Sunderland Marine Insurance Company v. Kearney*, 20 Law J. (N. S.) Q. B. 417.

POOR RATE.—Plea—Replication.—The overseer of a township may execute by deputy a warrant directed to him to levy a rate, such an act being purely of a ministerial character. Under the 12 & 13 Vict. c. 14, s. 1, the party applying for the warrant is the person to whom the costs of such application are to be paid. To an action of trespass for breaking and entering the plaintiff's house, and for taking his goods, the defendant pleaded that the plaintiff's house was situate in a township, in which a poor rate had been made; and that, on the plaintiff's refusing to pay the same, the churchwardens and overseers of the township applied to two justices, who issued a warrant to the overseers and constables of the township, directing them to levy the amount of the rate, and 6*s.* costs incurred by the churchwardens and overseers; and that the defendant committed the act complained of as the servant of the overseers. Replication, that the plaintiff, before the distress, tendered the amount of the rate (but without the costs): Held, that the plea was good, as the overseers could appoint a deputy to execute the warrant; and that, on general demurrer, the word "servant" was equivalent to that of deputy; and that the parties who had obtained the warrant were entitled to their costs: Held, also, that the replication was ill, as pleading a tender of part only of what was due. *Walsh v. Southworth*, 6 Exch. 150.

PRACTICE.—I. Costs—13 & 14 Vict. c. 61, s. 13.—An application to a judge at chambers by a plaintiff for costs, under the County Courts Extension Act, 13 & 14 Vict. c. 61, s. 13, need not be supported by affidavit, unless the facts are controverted by the defendant. *Power v. Jones*, 6 Exch. 121.

2. Issuable plea—Absence beyond seas—Notice of proceedings.—A plea is not issuable which has been already decided to be bad by

the judgment of a court. In error to reverse outlawry, the error assigned being that, at the time of issuing the *exigi facias*, the plaintiff in error was beyond the seas, the defendant pleaded that the plaintiff left the realm before the awarding of the *exigi facias*, and voluntarily remained absent; and that he had notice that he was about to be demanded at the County Courts, and might have returned before they were holden: Held, that this plea was not issuable. *Beauclerk v. Hook*, in error, 20 Law J. (N. S.) Q. B. 485.

3. *Service of writ—Corporation*—1 & 2 Geo. 4, c. 93, s. 9—*Affidavit—Appeal*.—By 1 & 2 Geo. 4, c. 93, s. 9, "the principal officers and commissioners of the navy" for the time being were empowered to bring and maintain any action of ejectment or other proceeding for recovering possession of lands, &c. vested in them, and to bring, maintain or defend any other action in respect of the said lands, &c.; and it was enacted that in every such action they should be called by the above name, without naming any of them. By subsequent acts the powers, &c. of the above body were vested in the defendants. A writ, in an action of debt against the defendants by their collective name, was served upon A. M., one of their number. It required the defendants to enter an appearance in an action of debt, and stated that in default an appearance would be entered for them. Upon a motion to set aside this writ and the service thereof for irregularity, the affidavit stated that the action was brought for half pay, which was not a cause of action for which an action for debt could be maintained against the defendants by their collective name: Held, first, that the court could not upon this motion look at the affidavits as to the cause of action, and that inasmuch as the 1 & 2 Geo. 4, c. 93, s. 9, authorized some actions of debt to be maintained against the defendants by their collective name, there was no ground for setting aside the process as irregular; secondly (per Maule, J.), that the proper method of effecting complete service upon the commissioners is by serving each of them. *Semble*, that the court will never, upon motion to set aside process for irregularity, decide that the plaintiff has no cause of action, and thereby deprive him of his appeal, however clear the matter may appear on the affidavit. *Williams v. The Commissioners for executing the Office of Lord High Admiral*, 20 Law J. (N. S.) C. B. 245.

PREScription ACT.—2 & 3 Will. 4, c. 71, ss. 3, 4, 6—*User once a year*.—In trespass *quare clausum fregit* pleas of an user of the locus in quo as a road for a full period of twenty years and forty years preceding the commencement of the suit, under 2 & 3 Will. 4, c. 71, are not supported by proof of an user for twenty and forty years up to within fourteen months before the commencement of the suit. *Semble*, that to furnish proof of a right by user under that statute, there ought to be an user at least once a year. *Lowe v. Carpenter*, 20 Law J. (N. S.) Exch. 375.

2. 2 & 3 Will. 4, c. 71—*Interruption for less than a year—Evidence*.—Although under 2 & 3 Will. 4, c. 71, s. 4, no interruption will prevent a right from being acquired by twenty years' user, unless it

has been acquiesced in for a whole year, yet an interruption for a shorter period may have the effect of showing that the enjoyment never was as of right, and thereby of preventing a right being acquired under section 1 of the same act. Upon the trial of an issue whether the plaintiff had acquired a right to a watercourse by a twenty years' user as of right without interruption, evidence was offered that during the twenty years the defendants (a water company), who claimed to be entitled to divert the water, had penned it back from the plaintiff's land, and had laid an information, under their local act, against the plaintiff's servant, who had removed the obstruction, and who was convicted and fined a shilling, which the plaintiff paid: Held, that this evidence was properly admissible as negating an enjoyment by the plaintiff as of right. *Eaton v. Swansea Waterworks Company*, 20 Law J. (N. S.) Q. B. 482.

PROHIBITION.—*Foreign sovereign*—*Application by a stranger*.—No English court has jurisdiction to entertain an action against a foreign sovereign for anything done or omitted to be done by him in his public capacity as representative of the nation of which he is the head. Where the Lord Mayor's Court of London has no jurisdiction over the person of a defendant against whom complaint has been entered in that court, the awarding process of foreign attachment against a person having funds in his hands belonging to the defendant, as a means of compelling an appearance, is an excess of jurisdiction for which prohibition will lie. Where, therefore, a plaint was entered in the Lord Mayor's Court against the Queen of Portugal "as reigning sovereign and supreme head of the nation of Portugal," to recover a debt alleged to be due from the Portuguese government, and a foreign attachment had issued according to the custom of the city of London, the court made absolute a rule for a prohibition to restrain proceedings in the action and in the attachment. The same principle was applied to a case where a plaint was entered in the Lord Mayor's Court against the Queen of Spain, not expressly as reigning sovereign and head of the Spanish nation, but where it appeared by affidavit that the plaintiff's sole cause of action arose upon a Spanish government bond, purporting to have been issued under a decree of the Cortes, sanctioned by the Regent of Spain in the name of the Queen, then a minor. The writ of prohibition may, in such cases, be granted on the application of the Queen (the defendant) before she has appeared to the action in the Lord Mayor's Court; or on the application of the garnishee, either before or after he has pleaded nil debet. Where an inferior court has no jurisdiction to entertain a suit, it is not necessary to entitle a party to a prohibition that he should have there pleaded to the jurisdiction, and that the plea should have been overruled. The court is bound to grant a prohibition where a court has no jurisdiction, upon the application of a stranger as well as of a party to the proceedings. The process of foreign attachment can only be resorted to where the cause of action against the original defendant arises within the jurisdiction of the court from which the attachment issues. *De Haber v. The Queen of Portugal*; *Wadsworth v. The Queen of Spain*, 20 Law J. (N. S.) Q. B. 488.

POWER.—Personal property.—A power was reserved to a married woman to dispose of personal property by her last will and testament in writing, to be by her duly made and published in the presence of, and to be attested by, two or more credible witnesses. The donee, by her will, without any reference to the power, or to the subject-matter, bequeathed to her husband "all that she did and should or would thereafter be entitled to, or should possess;" concluding thus, "Signed by me, E. J., February 24, 1831, in the presence of two witnesses," and then followed the signatures of the two witnesses: Held, that this was not a due execution of the power. *Johns v. Dickenson*, 8 C. B. 934.

QUO WARRANTO.—Clerk to guardians—4 & 5 Will. 4, c. 76, s. 46—Office of public nature—Mandamus.—The office of clerk to the board of guardians of an union, appointed under the provisions of 4 & 5 Will. 4, c. 76, s. 46, is an office created by statute and of a public nature, in respect of which a quo warranto will lie. Where, therefore, such an office is full, a mandamus is not a proper mode of trying the validity of the election. *Reg. v. St. Martin's-in-the-Fields, (Guardians of)*, 20 Law J. (N. S.) Q. B. 423.

RAILWAY COMPANY.—Compensation—Reference to arbitration.—A railway company, by their special act, were empowered to purchase land, and enter upon and use the same for the purposes of the railway. But they were not, "except by consent of the owner or occupier," to enter upon any such lands until they should have paid, or deposited in the Bank of England, the purchase money or compensation agreed or awarded to be paid for all interest in the same. The company, with the consent of the owner (the plaintiff), entered, in 1847, for certain lands required for the purposes of the railway; the amount of compensation having been, by an agreement between them, referred to an arbitrator, who, in 1849, awarded a certain sum as compensation. No tender of a conveyance nor payment of the sum awarded had been made, and, after the award, a demand of possession was served upon the company: Held, that an action of ejectment could not be maintained against the company, the plaintiff's only right being to enforce the payment of compensation under the award. *Doe d. Hudson v. Leeds and Bradford Railway Company*, 20 Law J. (N. S.) Q. B. 486.

2. Crossing public highway—Railway Clauses Consolidation Act, 1848—Option—Mandamus.—A mandamus reciting that a railway crossed a certain public highway, not on a level, by means of a trench or cutting, in which the permanent way of the railway had been laid down, whereby the highway was rendered impassable for carriages and passengers, commanded the company to cause the said public highway to be carried over the railway by means of a bridge, in conformity with the regulations of the Railway Clauses Consolidation Act, 1848. The mandamus was held bad, on the ground that, by the Railway Clauses Consolidation Act, s. 46, where the railway crossed a public highway not on a level, the company had an option either to carry the road over the railway or the railway over the road,

and that it did not appear sufficiently on the mandamus that the company had determined that option so as to render it imperative on them to adopt the one alternative commanded by the mandamus, as although the company might have intended that the rails as laid down should be the permanent way, they were at liberty to take them up and lay them down in a different manner. *South-Eastern Railway Company v. The Queen*, 20 Law J. (N. S.) Q. B. 428.

3. *Liability of—Defective carriages—Injury to horses—Special contract.*—A declaration against a railway company stated that the plaintiffs, at the defendants' request, delivered, and the defendants received, certain horses to be carried and conveyed for the plaintiffs by the defendants in their carriages upon and along their railway, for reward to them in that behalf, from H. to S.; that after such delivery and acceptance the said horses were placed in certain carriages of the defendants to be so carried and conveyed; that after the said horses had left H., and whilst they were being conveyed along the railway, and whilst the said carriages and locomotive power thereof were under the management of the defendants, one of the wheels of the said carriages caught fire, of which the defendants had due notice, and were afterwards, at a convenient time and place, to wit, at the next station, requested by the plaintiffs not to persist in conveying the said horses in the said carriage farther, which the defendants refused to do, and in spite of such request did continue to convey the said horses in the said carriage; that afterwards the wheel again took fire by and for want of due precaution against friction, and in consequence thereof the said carriage was thrown out of its proper position on the railway, and the said horses injured. Plea, amongst others, traversing the delivery and acceptance of the said horses to be carried modo et formâ. At the trial, the defendants put in evidence a ticket signed by one of the plaintiffs on the occasion of the horses being received and placed upon the railway, in which was a memorandum stating that the ticket was issued subject to the owner undertaking all risk of injury by conveyance and other contingencies, and his seeing to the efficiency of the carriage before the horses were put therein, the charge being for the use of the carriage and the locomotive power only; and that the company would not be responsible for any alleged defects in their carriages or trucks, unless complained of at the time of booking, or before the same left the station, nor for any damage whatever to horses, &c., travelling upon their railway in their vehicles: Held, that the special terms of the memorandum disproved the bailment alleged in the declaration, which was material to the breach, and, therefore, that the defendants were entitled to the verdict on the above plea. *Austin v. Manchester, Sheffield and Lincolnshire Railway Company*, 20 Law J. (N. S.) Q. B. 440.

4. *Liability of carriage of mails and officers of the Post Office—Duty of company—1 & 2 Vict. c. 98—Personal injury to officer.*—A declaration in case alleged that the mails from L. to T. were carried on the defendants' railway, pursuant to the provisions of the 1 & 2 Vict. c. 98; that the plaintiff was an officer of the Post Office, whom

the defendants had been reasonably required by the postmaster-general to take up and carry, and had taken up and were carrying as such officer, in and upon a carriage of the defendants, in which the said mails were being conveyed; that the plaintiff, as such officer, then was lawfully in and upon the said carriage, and that thereupon it became and was the duty of the defendants to use due and proper care and skill in and about the carrying and conveying the plaintiff. Breach, that the defendants omitted and neglected to use due and proper care and skill, and so negligently and unskilfully conducted themselves in and about carrying and conveying the plaintiff, and in conducting, managing and directing the said carriage and the engine and other carriages, and the railway itself, that the said carriage sustained a violent concussion, and the plaintiff was thereby greatly injured and prevented from attending to his business, &c. (alleging special damage): Held, upon demurrer, that a duty, as alleged, arose out of the obligation imposed upon the defendants by the 1 & 2 Vict. c. 98, and that the action was maintainable. *Collett v. London and North-Western Railway Company*, 20 Law J. (N.S.) Q. B. 411.

5. *Mandamus to construct railway—Compulsory powers of purchase.*—The time limited by a railway company's special act for the exercise of the company's powers for the compulsory purchase of lands having actually expired before the granting of a writ of mandamus: Held, upon a demurrer to a return of the writ, that the company could not be compelled by mandamus to purchase the lands necessary for making and completing a branch railway, as they had been required to do by a notice on the part of the landowners, a month before the expiration of their powers. (The case of *The Queen v. The Birmingham and Gloucester Railway Company* (1) distinguished.) *Reg. v. London and North-Western Railway Company*, 20 Law J. (N.S.) Q. B. 399.

SALE OF GOODS.—*Broker's bought-and-sold note—Material variance in broker's book—Memorandum in writing—Statute of Frauds.*—As between buyer and seller, the bought-and-sold notes, signed and delivered by a broker acting for both parties, when they agree, and there is no signed entry of the contract in the broker's book, are the memorandum in writing which constitutes the contract binding on both parties within the Statute of Frauds. But when they materially vary, there is no such binding contract; and neither the bought note delivered to the buyer, nor the sold note delivered to the seller, can then be treated by itself as such memorandum in writing. The entry of the contract made in the broker's book, and signed by him, constitutes the binding contract between the parties; and a variance between it and the bought or sold note afterwards delivered by the broker would not affect its validity; per Lord Campbell, C. J., Paterson, J., and Wightman, J. But, per Erle, J., bought-and-sold notes, signed and delivered by a broker acting for both parties, who has made no signed entry in his books of the contract, are not, by presumption of law, without other evidence of intention, a binding contract in writing, and do not exclude other evidence of the contract,

and of a compliance with the Statute of Frauds, in case the bought-and-sold notes materially vary. Declaration, setting out a sold note, signed by a broker for the sale to the defendant of "500 tons of Messrs. Dunlop, Wilson and Co.'s pig iron," and averring a breach of the contract on the part of the defendant in not accepting or paying for the iron when tendered. Plea, non assumpsit. It was proved that the broker, on behalf of the plaintiff, had verbally agreed to sell the defendant "Dunlop, Wilson and Co.'s iron;" and on the 26th of February, 1849, delivered a bought note to the defendant. The bought note being produced, differed from the sold note delivered to the plaintiff, in stating the purchase generally as of "500 tons of Scotch pig iron." There was no signed entry of the contract in the broker's book. The learned judge allowed the declaration to be amended according to the terms of the bought note. It was then further proved that the broker had the delivery orders for iron ready to be handed to the defendant on the 26th of March; and between that date and the 27th of October, the defendant several times authorized the broker to propose terms to the plaintiff as to the delivery of the iron and the payment of the purchase-money, without, however, any reference being made to the terms of either the bought or sold note. The jury found that the defendant had subsequently ratified the contract in the terms stated in the bought note: Held, per Lord Campbell, C. J., Patteson, J., and Wightman, J., first, that there was a material variance between the bought-and-sold notes, and therefore that they did not constitute a valid contract; secondly, that, assuming there was evidence of a parol contract, there was no sufficient memorandum in writing within the Statute of Frauds to make such contract binding upon the defendant: Held also, per Lord Campbell, C. J., and Wightman, J., that there was no sufficient evidence of any subsequent ratification by the defendant of the contract as stated in the bought note: Held, per Erle, J., that the jury were warranted in inferring, as it appeared they intended to do, the substance of the contract to be as stated in the bought note and amended declaration; and that the plaintiff, therefore, was entitled to succeed on the ground either that the bought-and-sold notes did not substantially vary, or that the bought note, which stated the substance of the contract, was a sufficient memorandum within the Statute of Frauds to bind the defendant. *Sivewright v. Archibald*, 20 Law J. (N. S.) Q. B. 529.

2. *Executory contract—Discharge by purchaser—Damages.*—Where, under an executory contract for the manufacture and supply of goods from time to time, to be paid for after delivery, the purchaser, having accepted and paid for a portion of the goods contracted for, gives notice to the vendor not to manufacture any more, as he has no occasion for them, and will not accept or pay for them, the vendor having been desirous and able to complete his contract, he may without manufacturing and tendering the rest of the goods sue the purchaser for breach of contract, and will be entitled to a verdict on pleas traversing allegations that he was ready and willing to perform the contract, and that the de.

fendant refused to receive the residue of the goods, and prevented and discharged the plaintiff from manufacturing and delivering them. A declaration in covenant stated a contract under seal, whereby the plaintiffs agreed to supply to the defendants (a corporation) 3900 tons of cast iron chairs, in certain quantities per month, from February, 1847, to May, 1848; payments to be made by the defendants a month after delivery, and the engineer to have power from time to time to alter the deliveries in any way or proportion. It then averred that although the defendants accepted a portion of the said chairs, and although the plaintiffs were ready and willing to perform the said contract until the refusal and discharge by the defendants thereafter mentioned, yet the defendants wholly refused to accept or receive the residue of the said chairs, and wholly prevented and discharged the plaintiffs from supplying the said residue, and from further performance of his contract. Issues were joined on pleas denying that the plaintiffs were ready and willing to perform their contract, and that the defendants refused to accept or receive the residue of the chairs, or prevented or discharged the plaintiffs from supplying the same or from the performance of their contract. The evidence was, that, soon after the delivery commenced, the engineer, who had a general authority to act on behalf of the company, requested them to be made more slowly, and afterwards desired the plaintiffs to send all the chairs then made, but not to make any more. The plaintiffs accordingly discontinued making any more, but were in a position to have supplied the specified quantities if required so to do: Held, that the plaintiffs were entitled to the verdict on both issues. The plaintiffs had contracted with other parties for the supply of some of the chairs at a price rather above the average price to be paid to them by the defendants, and were obliged to pay 500*l.* to get off their sub-contract, and they had also entered into arrangements with ironfounders for the supply of iron, and had built a large foundry for the manufacture of the chairs: Held, that these matters were properly taken into consideration in assessing the damages. *Cort v. Ambergate, Nottingham and Boston and Eastern Junction Railway Company*, 20 Law J. (N. S.) Q. B. 460.

SHIP AND SHIPPING.—1. *Master—Hypothecation—Insurable interest.*—The master of a ship has no authority to hypothecate the ship for money advanced for repairs, unless the payment of the money borrowed is made to depend upon the arrival of the ship, nor can he pledge the ship itself and the personal credit of the owners. Where the master of a ship, having borrowed money for repairs, gave the lender bills on the owner of the ship and on the consignee of the cargo for the amount, and also an instrument by which he purported to hypothecate the vessel, &c.; and stipulated that in case the bills were not accepted or paid, the lenders might take possession, and sell under process of the Admiralty Court, and in which it was agreed that the lender should forbear maritime interest, and that the advances were to be recoverable whether the vessel arrived at its port of destination or not: Held, that the instrument was void, and that the

lender had no insurable interest. (The case of *Samsun v. Bragginton*, 1 Ves. 443, fully stated and commented upon.) *Stainbank v. Fenning*, 20 Law J. (N. S.) C. B. 226.

2. *Owner not liable*.—The authority of the master of a ship to pledge the credit of his owner is incident to his being employed to bring the ship to the end of its voyage, and to obtain things necessary for that purpose he may, in the absence of his owner or any easy means of communication with him, pledge his credit or even borrow money in his name where immediate payment for such necessary things is required, but he has no authority to borrow money to pay for work previously done. Therefore, where a ship bound to Newcastle was towed into that port, no agreement having been previously made that the tonnage was to be paid for immediately, and the master six days afterwards borrowed money to pay the tonnage: Held, that the owner was not liable. So where repairs were being done to the ship after its arrival at Newcastle, and the owner was residing one day's post distance, and the master borrowed money to enable the shipwright to pay his workmen on Saturday, the owner was held not to be liable. *Beldon v. Campbell*, 20 Law J. (N. S.) Exch. 342.

STAMP.—55 Geo. 3, c. 184, sched. part 1—*Agreement—Prospectus—Proposal*.—In an action by a schoolmaster for a sum of money in lieu of three months' notice of the removal of the appellant's (the defendant's) sons from school, it appeared that the appellant's agent having expressed a wish that the appellant's sons should be placed under the respondent's (the plaintiff's) care, received from the latter a prospectus, which stated that the terms were sixty guineas per annum, and that three months' notice or payment was required previous to the removal of a pupil. The respondent, at the time of delivering the prospectus, agreed verbally that the boys should be charged for at the rate of fifty guineas per annum each. The boys were thereupon sent to the respondent's school, and were taken away without the stipulated notice: Held, that the prospectus was a proposal and not an agreement, and that no stamp was necessary. *Clay v. Crofts*, 20 Law J. (N. S.) Exch. 361.

STATUTE OF USES.—*Covenant to stand seised*—8 & 9 Vict. c. 106, ss. 2, 4.—The plaintiff in ejectment, on a demise of the 12th of October, 1850, claimed under the following deed:—"In consideration of the love and affection which I have towards my son W. S. (the lessor of the plaintiff), I have given and granted, and by these presents do give and grant, to the said W. S. all that, &c., and that the said W. S. is to take possession of the same at Michaelmas day next (1850). I have delivered him the said W. S. all the premises absolutely at Michaelmas day next without further condition." Held, that, supposing such deed to be void as a grant of the freehold in futuro, still the day named having passed, the plaintiff was entitled to recover, the deed amounting to a covenant to stand seised to the use of W. S. The stat. 8 & 9 Vict. c. 106, s. 4, which enacts, "that the word 'give' or the word 'grant' in a deed shall not imply a covenant

in law," Held inapplicable to the case. *Doe d. Starling v. Prince*, 20 Law J. (N. S.) C. B. 223.

STOPPAGE IN TRANSITU.—*Bill of lading making cargo deliverable to consignor's order—Delivery on board consignor's vessel.*—B. & Co., merchants at Liverpool, sent orders to M. & Co., merchants at Charlestown, to ship on account of B. & Co. a cargo of cotton on board a vessel of B. & Co.'s, which was sent to Charlestown with an outward cargo, and also to receive the cotton. M. & Co. thereupon purchased cotton from time to time and shipped it on board B. & Co.'s vessel. The master of the vessel executed to M. & Co. a bill of lading, which stated that the cotton was to be delivered at Liverpool "to order or to our assigns, paying for the freight for the cotton nothing, being owners' property." M. & Co. indorsed the bill of lading, "Deliver the within to the Bank of Liverpool or order, M. & Co." Afterwards, M. & Co. sent to B. & Co. an abstract invoice of the cotton, in which they stated that they had shipped the cotton on board the vessel "by order and for account and risk" of B. & Co., and addressed "to order;" and still later they sent to B. & Co. a full invoice stating that the cotton was shipped by "order and for account of B. & Co., and to them consigned." M. & Co. not having sufficient funds of B. & Co. to pay for the cargo of cotton, drew bills on B. & Co. for the amount, and wrote to B. & Co. informing them of the drawing of the bills, and desiring them to insure the cotton. M. & Co. sold the bills they had so drawn to the bank at Charlestown, and delivered to the bank the bill of lading so indorsed as a security for the payment of the bills, which were ultimately dishonoured and taken up by M. & Co. B. & Co. became bankrupts before the arrival of the vessel. M. & Co. by means of their agent, on its arrival, put in a claim to the cargo. The assignees of B. & Co. brought detinue against M. & Co.'s agents, who pleaded that the bankrupts, B. & Co., were not possessed, and that the plaintiffs were not possessed as assignees: Held, that M. & Co. had never parted with the property in the cotton to B. & Co., notwithstanding the delivery on board the vessel of B. & Co., because M. & Co. had at the time of the delivery reserved to themselves a *jus disponendi*, and preserved their rights as unpaid vendors, which the captain acknowledged by signing the bill of lading making the cotton deliverable to their order or assigns, although in executing such a bill of lading the captain might have exceeded his authority: Held, also, that M. & Co. did not by transferring the bill of lading as security to the bank at Charlestown lose their property in the goods so as to prevent their claiming them as against B. & Co. or their assignees, and that the defence might be raised under the plea of not possessed. *Turner v. Trustees of the Liverpool Docks*, 20 Law J. (N. S.) Exch. 393.

TROVER.—*Pleading—Not guilty.*—In trover, the plea of not guilty admits the property of the plaintiff. Therefore, evidence that the chattels had been given to the plaintiff by the defendants upon a certain condition, which had not been performed, and that the de-

pendants retook them, is not admissible under that plea. (*Young v. Cooper*, 20 Law J. (N. S.) Exch. 136, explained.) *Jones v. Davies*, 20 Law J. (N. S.) Exch. 433.

VENDOR AND PURCHASER.—*Warranty—Conditions of sale—Waiver of objections.*—Real property settled upon A. for life, with remainder to trustees upon trust for sale, and to stand possessed of the proceeds for all the children of A. equally, to be paid on their attaining twenty-one, was contracted to be sold by the trustees in the lifetime of A. A.'s children had attained twenty-one and had conveyed their interests to trustees for the benefit of their children, who were minors, without any power of sale being given to such trustees. One of the conditions of sale was as follows:—The purchaser shall not object to the vendor's title on the ground that the sale is taking place in the lifetime of A. The children of A., or the assigns and trustees of such of them as have aliened or settled their estates and interests, shall, if required, join in the conveyance to the purchaser: Held, that this amounted to a warranty that the children, or those representing them, were in a condition to join in an effectual conveyance to the purchaser, and that the purchaser was not precluded from relying on this defect of title. All objections not taken by a certain day were to be considered as waived. Before the day, the purchaser's solicitor wrote to the vendor's solicitor objecting to the title solely on the ground of the sale taking place in A.'s lifetime, but the letter inclosed an opinion upon the title, which expressly pointed out that the trustees of the children's shares had no power to join in the conveyance: Held, that the letter and opinion must be read together, and sufficiently stated the latter ground of objection. *Masley v. Hida*, 26 Law J. (N. S.) Q. B. 539.

WARRANTY.—*Copyright, equitable assignment of—Specific performance.*—The defendant having been applied to by the plaintiff for permission to publish a work, wrote to him as follows:—"You formerly made me an offer of 50*l.* for the exclusive right of publishing for ten years Captain M.'s work, "Monsieur Violet," which offer I accepted, and wrote to you to that effect. I possess but few of the copyrights of the earlier portion of Captain M.'s works, and there are many of them published in a cheap edition. I will let you know in a few days those of the works that belong to me that I feel disposed to offer you. In the mean time I shall be glad to know if you received my last letter accepting your offer for 'Monsieur Violet,' and if not, whether you still hold the same proposal." The 50*l.* was afterwards paid, for which the defendant gave a receipt to the plaintiff, expressed to be "for permission to publish Captain M.'s work, 'Monsieur Violet,' so long as the copyright may endure, that right to be exclusively his own for ten years." Held, that this amounted to an express warranty by the defendant that he had the title to the copyright in question. Prior to this transaction, Captain M., by an instrument in writing, not sealed or attested so as to pass as a legal copyright, agreed to assign the copyright in "Monsieur Violet" to R. B. for 300*l.*, with a stipulation that a deed of assignment of the copyright should be executed. The 300*l.* was duly paid by R. B.

Held, that the effect of this was to vest the equitable copyright in R. B., who would be entitled to a decree for a specific performance of the contract, and that the plaintiff was consequently entitled to succeed upon issues denying the defendant's title to grant the copyright, and alleging that R. B. was equitably the proprietor thereof, and had the sole right to grant permission to publish. *Simms v. Marryat*, 20 L. J. (N. S.) Q. B. 454.

WILL.—Summons—Trust—Legacy—County Courts Act, 9 & 10 Vict. c. 95, s. 65—Duty of County Court judge.—A testator bequeathed his property to C. M. and J. Wilson, their executors, &c., in trust for certain purposes, and the residue of his property he bequeathed to the same parties, upon trust, as to one-sixth part, to pay the same equally between the four children of his sister. He then appointed C. M. and J. Wilson executors and trustees of his will. He afterwards added a codicil, whereby he appointed S. E. an executor of his will in the room of C. M. deceased, and to act in conjunction with the other "executor in his said will." The plaintiff's late wife was one of the four children of the testator's sister; and the plaintiff, as her administrator, brought an action in the County Court to recover from the defendant, J. Wilson, "a fourth part of the sixth share of the residue," and the action in the County Court was described in those terms in the summons and in the particulars of demand. A motion for a prohibition after sentence having been made on the ground that the bequest amounted to a trust, and not to a legacy, and therefore was not within the jurisdiction of the County Court: Held, first, that this was a legacy to the plaintiff within the meaning of the act, and not a legacy to the executors in trust, and therefore that the County Court judge had jurisdiction. *Quære*, whether a prohibition can be granted where there is no defect apparent on the face of the proceedings? *Dictum*: a judge of a County Court is bound in all cases to set out the facts on the proceedings, so that his jurisdiction may appear; and in the present case the judge ought not merely to have set out the summons, but to have shown sufficiently that this was a legacy within the meaning of the County Courts Act, 9 & 10 Vict. c. 95, s. 65. *Pears v. Wilson*, 20 Law J. (N. S.) Exch. 381.

WRIT OF TRIAL.—Judge of County Court—Court of record.—A writ of trial from the superior courts cannot be directed to a judge of a County Court, under the stat. 3 & 4 Will. 4, c. 42, s. 17, as a County Court is not a court of record within the meaning of the statute. *Owens v. Breese*, 20 Law J. (N. S.) Exch. 359.

CRIMINAL AND MAGISTRATES' CASES.

CONTAINED IN

20 Law J. (N.S.) part 11.

EVIDENCE.—*Deposition—Admissibility of—Absence of witness.*—The deposition of a witness taken before a magistrate upon a criminal charge is (independently of the 11 & 12 Vict. c. 42, s. 17,) receivable only in evidence at the trial in case the deponent is dead, or is kept out of the way by the procurement of the prisoner. Where, upon the trial of three persons for felony, it appeared that a witness had been kept out of the way by the procurement of one only of the prisoners, and the deposition was admitted in evidence against all the prisoners, it was held to have been improperly admitted against those who were unconnected with the absence of the witness. *Reg. v. Scaife*, 20 Law J. (N.S.) M. C. 229.

MASTER AND SERVANT.—*Warrant of commitment—Alleged contract in writing of service entered upon.*—A warrant of commitment issued by a justice, under the stat. 4 Geo. 4, c. 34, s. 3, recited that complaint had been made to the justice that A. had contracted to serve with B. and C. in their business for a term of one year, to commence from the 11th of November last, and that the term of his contract being unexpired the said A. did, on the 2nd of June instant, unlawfully misconduct himself in his said service by neglecting and absenting himself from his said master's service without notice, or assigning sufficient reason. The warrant adjudged the complaint to be true, and convicted A. of the offence, and sentenced him to be imprisoned for a month: Held, that A. was entitled to be discharged from custody, as the warrant was bad for not stating either that the contract was in writing, or that A. had entered into the service. *In re Ashew*, 20 Law J. (N.S.) M. C. 241.

POOR LAW COMMISSIONERS.—4 & 5 Will. 4, c. 76, s. 46—*Order of poor law board, validity of—Parish.*—The 4 & 5 Will. 4, c. 76, s. 46, which allows the poor law commissioners to direct the guardians of a parish to appoint such officers as they shall think necessary, and also to direct the mode of appointment and “determine the continuance in office and dismissal of such officers,” applies as well to those parishes which are as to those which are not regulated by local acts. By the 2 & 3 Geo. 3, c. 1viii,

s. 21 (local), the vestrymen of the parish of St. J., W., were required to nominate twenty-one persons who should become the directors of the poor, and who were to make rules and regulations for the maintaining of the poor, and which were to be subsequently confirmed by the vestry. In pursuance of this section, in 1763 the vestry nominated twenty-one persons directors, by whom certain rules were made, which, among other things, appointed that the officers should be elected annually at Easter. These rules were duly confirmed, and have never since been repealed. By an order, bearing date the 17th of July, 1850, and addressed to the vestrymen of the said parish, the poor law board directed, among other things, by the 67th article, that the directors, whenever a vacancy occurred, should appoint fit persons to fill certain offices, and the 83rd article that every officer appointed to or holding any office under the order should continue to hold the same until he die, resign or be removed by the poor law board, or be proved to be insane to the satisfaction of the board: Held, that these articles did not exceed the powers conferred by the 4 & 5 Will. 4, c. 76, s. 46, on the poor law board, and that the order therefore was valid. *Reg. v. Poor Law Commissioners, In re Vestrymen of the Poor of St. James's, Westminster*, 20 Law J. (N. S.) M. C. 236.

SCIRE FACIAS.—*Pleading—Initial letters.*—Declaration in scire facias, on a recognizance to keep the peace, recited the recognizance had been acknowledged before “Lee B. Townshead, Esq., and J. H. Harper, Esq., two of our keepers,” &c.: Held, no good objection, on demurrer, that the justices were described by initial letters. Per Lord Campbell, C. J., a consonant may be assumed to be a name of baptism as well as a vowel. (The distinction taken in *Lomax v. Landells* (1) not acquiesced in.) *Reg. v. Dale*, 20 Law J. (N. S.) M. C. 240.

EQUITY.

Comprising the Equity Cases contained in the following Reports:—

9 Hare, part 1.
1 Simons, part 4.

3 Mc Naughten & Gordon, part 2.
20 Law Journal (N. S.) parts 11, 12.

ACCUMULATION.—*Thellusson Act* (39 & 40 Geo. 3, c. 98).—*Premiums on life assurance.*—A testator directed by his will that the income of his property should be applied in payment of the premiums on certain policies of assurance for the lives of his sons, and that their interest in the policies should be settled on marriage on their respective wives and issue: Held, that such direction did not constitute an accumulation of income within the meaning of the Thellusson Act. *Bassil v. Lister*, 20 Law J. (N. S.) Chanc. 641.

ACQUIESCENCE.—*Action—Small amount of damages—Injunction.*—The defendants were millowners on the banks of a canal, and having used the water of the canal for generating as well as condensing steam in their steam engine, the canal company brought an action against them, on the ground that the defendants had no power under the canal act to use the water for any other purpose than that of condensing steam. When the action was tried, the plaintiffs recovered only 1s. damages. The defendants threatened to continue using the water as before, and the plaintiffs moved for an injunction to restrain them: Held, that the plaintiffs having once established their right at law, it was not necessary for them, although nominal damages only were recovered, to bring further actions; but the injunction was refused, on the grounds that the plaintiffs had acquiesced for many years in the conduct pursued by the defendants. *Rochdale Canal Company v. King*, 20 Law J. (N. S.) Chanc. 675.

ACT 1 & 2 VICT. c. 110.—*Dividends.*—The proviso contained in the 14th section of the act 1 & 2 Vict. c. 110, that no proceeding shall be taken to have the benefit of the charge created under that section, until after the expiration of six calendar months from the date of the charging order, does not prevent the creditor from obtaining a stop-order to restrain the debtor from receiving dividends of stock accruing within the six months. The correct construction of the proviso is, that, although no steps can be taken to enforce immediate payment of the debt by realizing the security, yet that the judgment creditor may in the meantime, by force of the order, prevent the security given him by the statute from being defeated or diminished

pro tanto, by stopping payment to the debtor of part of his security. *Watts v. Jeffereys*, 3 M. & G. 372.

ADMINISTRATION.—*Prospective order.*—Order made on a claim that the money be received in respect of mortgages, forming part of the personal estate of an intestate, should be got in by the administrator, and divided from time to time by him among the parties interested. *Bullivant v. Bellairs*, 20 Law J. (N. S.) Chanc. 549.

AGREEMENT.—1. *Bill in parliament.*—H. and G. and several other persons, calling themselves the Lancashire and North Yorkshire Railway Company, introduced a bill into parliament for incorporating the company, and making their railway, which was intended to pass through the plaintiff's estate and near his residence. The plaintiff prepared to oppose the bill, but afterwards desisted, in consequence of H. and G. having agreed with him, on behalf of the company, that in case the company should, in the then or any subsequent session, obtain an act of incorporation, they would pay the plaintiff 1000*l.* for all lands required by them for making the railway, and 4000*l.* for residential injury, and 25*l.* for his personal expenses, and also that they would pay the expenses of his solicitor in the business. Afterwards the company agreed to join with a rival company, calling itself the Liverpool, Manchester and Newcastle Company, in applying for an act for making a railway, the line of which, so far as the plaintiff's estate was concerned, was the same line of the Lancashire and North Yorkshire Company, and the two companies agreed to adopt the agreement with the plaintiff. The act passed, and by it the two companies were incorporated by the name of the Liverpool, Manchester and Newcastle Railway Company: Held, that the incorporated company must be taken to be the parties on whose behalf H. and G. entered into the agreement with the plaintiff. The court also was of opinion that, as the plaintiff had withdrawn his opposition to the bill in parliament, the company, according to the true construction of the agreement, were bound to pay the sums agreed to be paid to him, although they had not taken possession of any part of his estate. But the question as to the construction of the agreement being a legal one, a case was directed for the opinion of a court of law. *Preston v. Liverpool, Manchester and Newcastle-upon-Tyne Junction Railway Company*, 1 Sim. 586.

2. *Compromise of suit.*—The court, upon a petition to enforce an agreement entered into by the parties to the cause, after the cause was at issue, to compromise the suit, refused to dismiss the bill, or to stay the proceedings in the cause. The proper proceeding to enforce an agreement for the compromise of a suit, where such agreement goes beyond the ordinary range of the court in such suit, or where the court has, in enforcing the agreement, to adjudicate on equities distinct from the equity appearing on the record in the cause, is by bill for specific performance, and not by interlocutory application in the existing cause; *semble*. *Ashen v. Millington*, 9 Hare, 65.

3. *Statute 7 & 8 Vict. c. 70, s. 8.*—The 8th section of the statute

7 & 8 Vict. c. 70, "for facilitating Arrangements between Debtors and Creditors," which enacts, that upon the filing of the resolution and agreement therein mentioned, all the estate and effects of the petitioning debtor shall vest in the trustee (if any be appointed) as fully as if such trustee were an assignee in bankruptcy, has not necessarily the effect of vesting in the trustee all the estate and effects of the petitioning debtor, but vests only so much of such estate and effects as the debtor may give up and the creditors accept, or that part of the estate and effects in respect of which the trustee is appointed. The second meeting of creditors convened under the 4th section of the act may accept or reject, but cannot vary, the terms of the agreement assented to by the first meeting; *semble*. *Robins v. Hobbs*, 9 Hare, 122.

4. *Violation of act*.—A railway company constituted under an act of parliament, agreed with two other railway companies that the whole concern, without incumbrance, when completed, should be worked by those two companies, who should have perfect control, and exercise all the rights of the first-mentioned company, and who should find stock and work the concern for twenty-one years: Held, that the agreement was illegal, as being in violation of the act under which the first-mentioned company was constituted; and that, though a very large majority of the shareholders present at a meeting had sanctioned the agreement, the dissentients might file a bill on behalf of themselves and the other shareholders against the company and its directors to have it declared void. *Beman v. Rufford*, 1 Sim. 550.

ASSIGNMENT OF MORTGAGE.—An assignment of a mortgage, not containing any words of transfer beyond those incidental to a transfer of the mere mortgage, does not pass rent then in arrear. *Salmon v. Dean*, 3 M. & G. 344.

BANKRUPTCY.—*Certificate*.—The 198th section of the Bankrupt Law Consolidation Act, 12 & 13 Vict. c. 106, providing that, forthwith after the bankrupt shall have passed his last examination, the court shall appoint a public sitting for the allowance of his certificate, at which sitting the assignees, or any creditor having given three clear days notice, may be heard in opposition to such certificate: Held, that the commissioner was justified in adjourning such meeting on the application of a creditor desirous of opposing the granting of the certificate, but who had failed to give the three days notice. *In re Woods*, 3 M. & G. 269.

BARON AND FEME.—*Settlement out of money belonging to her—Fund under 200l.—Marital right*.—The husband of a married woman became insolvent, and 140l. belonging to her was claimed by his assignees, but upon the application of the wife the court ordered the surplus, after payment of the costs of all parties, to be settled for the benefit of the wife and her children. *In re Cutler's Trust*, 20 Law J. (N. S.) Chanc. 504.

CHARITABLE FOUNDATION.—*Discretion of trustees—Control of the court—Notice of election*.—Real estate was vested in

trustees upon trust that the incumbents of the parishes of A., B., C. and D., and their successors, should employ the rents to and for the maintenance and education and keeping at Oxford of a lad, in order to make him a minister of the church of England, such lad to be chosen out of one of the said parishes, and of such parents who were not of ability to give him such maintenance and education, in case such lad could be found in any of the said parishes whom the trustees should think eligible; but if not, then from any parish in England or Wales; but in every instance where a candidate, fit or proper in the judgment of the trustees, could be found in any of the said parishes, he was to be preferred. A vacancy occurring, there were two candidates, G., a native of one of the said parishes, and J., a stranger. The trustees elected J. A petition was presented by the father of G. and others, praying a declaration that the election of J. was invalid, and that G. ought to have been elected, or that a new election might be had. The affidavits of the trustees stated, that on the day of election the cases of J. and G. were fully and impartially considered by all the trustees, and that in the fair and bonâ fide exercise of their discretion, without favour or ill feeling towards any individual or class, they unanimously considered J. the proper object for the benefit of the charity; but no reason was given why G. was not considered eligible. The court, upon appeal, refused to interfere with their discretion. Where, in the exercise of a discretion given to trustees, there appear an absence of indirect motive, an honesty of intention, and a fair consideration of the case, the court will not examine into the accuracy of the conclusion come to by the trustees. Trustees are not bound to set forth the particular grounds of selection; and *semble*, it is prudent not to do so; but where reasons are stated which do not justify the conclusion, or where it is admitted that they have acted upon an erroneous principle, the court will interfere. It is the duty of trustees of a charitable foundation to give notice of their intention to proceed to an election; but where the fact was notorious to the parties interested, and it was not shown that any one was prejudiced by the want of formal notice, the court overruled the objection. *In re Beloved Wilkes' Charity*, 20 Law J. (N. S.) Chanc. 588.

CLAIM.—1. *Administration of an estate.*—Upon a claim filed by some of the residuary devisees under the will of the testatrix, who had given various legacies to Roman Catholic priests and charities, for the administration of her estate, a reference to the master was asked to inquire whether any of the legacies so given by the will were held upon any secret trusts for the performance of pious acts connected with the Roman Catholic religion: Held, that these inquiries could not be directed upon a claim. If the plaintiffs wanted more than the common administration decree, they must file a bill for the purpose. *Gilpin v. Magee*, 20 Law J. (N. S.) Chanc. 639.

2. *Breach of trust alleged.*—The court upon the hearing of a claim made an order for taking accounts and executing a trust; and held, that the pendency of a suit by bill, in which the same accounts and directions would be necessary, and which sought additional relief in

respect of alleged breaches of trust, was not a ground for staying the order upon the claim. *Scott v. Hastings (Lord)*, 9 H. 35.

3. *Foreclosure*.—At the hearing of a claim for foreclosure, option will be given to the plaintiff to take either the common order for foreclosure or an inquiry as to other incumbrances, suspending the order for foreclosure until after the report. *Robinson v. Turner*, 9 H. 129.

4. *Orders of April, 1850—Object and application of*.—The object of the Orders of April, 1850, was to obviate the necessity of bringing before the court in the first instance numerous parties having concurrent interests with the plaintiff, and to restore the former practice of the court, acted upon in the time of Lord Chancellor Hardwicke, when such parties appeared in the first instance before the master. Proceedings by claim are applicable only to simple cases, and where the decree would have been as of course, if a bill had been filed and all parties had been before the court at the hearing. *Eccles v. Cheyne*, 20 Law J. (N. S.) Chanc. 631.

5. *Parties—Partnership*.—The surviving partner of a firm is a necessary party to a claim by a creditor for payment out of the estate of a deceased partner of a partnership debt. *Hills v. Macrae*, 20 Law J. (N. S.) Chanc. 533.

6. *Payment of money into court*.—In a claim the plaintiff moved that the defendant might be ordered to pay into court a sum of money admitted by him upon affidavit to be due, and also to produce a document admitted to be in his possession. The court made the order. *Jefferies v. Biggs*, 20 Law J. (N. S.) Chanc. 638.

7. *Railway company—Specific performance*.—A contract entered into by the promoters of a railway company with a landowner, to pay a certain sum for the portion of his lands to be taken for the intended railway and for consequential damage, in consideration of which agreement the landowner withdrew his opposition to the bill: Held to be binding, although, after the passing of the act, the intention of making the railway be abandoned, and no part of the land be taken or required. Specific performance decreed of an agreement to pay, for the lands to be taken for a railway, a certain sum, which included not only the purchase money of the lands but compensation for the consequential damage to the property of the landowner; the case not being one in which compensation was under the act a distinct subject of contract, but being merely an agreement by the landowner to accept a sum in full for the purchase and damage; the purchase being the substance of the agreement, and the damage an incident. The fact that the railway company had, by the lapse of time, lost the powers which the legislature had given them to take lands, did not deprive them of the right to hold lands which they had acquired during the existence of their powers, or did it release them from their obligations which they had then contracted with reference to the purchase of land. The fact that the performance of an agreement has, owing to circumstances which have subsequently occurred, become hard in its consequences to one of the parties, or that he is called

upon to perform it under circumstances which he had not contemplated, is no objection to the specific performance of the contract in equity, there being nothing doubtful in the meaning of the agreement, and nothing hard or oppressive in its terms at the time it was made, *semble*. *Webb v. Direct London and Portsmouth Railway Company*, 9 H. 129.

8. *Statute of Limitations*.—At the hearing of a claim a defendant is at liberty to avail himself of the benefit of the Statute of Limitations without pleading it. *Sneed v. Sneed*, 20 Law J. (N. S.) Chanc. 630.

COMPANY.—*Winding-up Acts—Clubs*.—The affairs of a club were ordered to be wound up under the Joint-Stock Companies Winding-up Acts. *In the Matter of St. James's Club*, 20 Law J. (N. S.) Chanc. 630.

CORPORATION.—*Municipal Corporations Act*.—A right of presentation and appointment of the master of an hospital, with a chapel annexed, held to be vested in a corporation as charitable trustees within the meaning of the 71st section of the act 5 & 6 Will. 4, c. 76, the circumstances of the case showing that the right in question was thus vested, not for the benefit of the corporation, but for that of a charitable institution, independent of the corporation. *In re St. John's Hospital*, 3 M. & G. 235.

COSTS.—1. *Allowing suit to proceed for*.—The defendant having satisfied the demand for which the suit was instituted, the court refused to allow it to be proceeded with for the costs; but upon the terms of an agreement, to which the plaintiff had consented, but which the defendant had not strictly observed, ordered the defendant to pay the costs of the plaintiff out of pocket in the suit and on this notice of motion. *Tapp v. Tanner*, 20 Law J. (N. S.) Chanc. 559.

2. 6 & 7 Vict. c. 73, ss. 37, 38, 43—*Solicitor's bill—Taxation*.—A solicitor, acting on behalf of mortgagees, sold the mortgaged premises, and on the 27th of June, 1850, he retained the amount of his bill of costs out of the proceeds of the sale. On the 29th of June, 1850, he sent a copy of the bill to the solicitor of the mortgagor, and on the 27th of June, 1851, the mortgagor applied for an order for taxation: Held, that the taxation might have been had upon the common order; that the petition was presented in time; that it could scarcely be considered a payment of the bill of costs until the petitioner had the means of knowing the amount of the surplus, and that he was entitled to taxation; but that he must pay the costs beyond the costs of the common order. *In re Steel*, 20 Law J. (N. S.) Chanc. 562.

3. *Metropolitan Improvement Acts*.—The court has no jurisdiction under the 3 & 4 Vict. c. 87 (Metropolitan Improvement Act), to order the costs and expenses of making out a title to land, required by the commissioners to be paid by them, or in the case of a tenant for life, out of the purchase money. *In re Strachan's Estate*, 20 Law J. (N. S.) Chanc. 511.

COVENANT.—The owner of an estate covered it with houses, and sold some of them, subject to a covenant not to carry on any trade, business or calling therein, or to otherwise use, or suffer the same to be used, to the annoyance, nuisance or injury of any of the houses on the estate: Held, that the carrying on of a girls' school in one of the houses was a breach of the covenant; and that the covenantee had not waived the benefit of the covenant, though he had permitted other houses held under the said covenant to be used as schools. *Kemp v. Sober*, 1 Sim. 517.

DEED.—1. *Cancellation and setting aside of—Trustee and cestui que trust.*—A deed of settlement, whereby the settlor is delivered bound hand and foot as to the property settled into the power of his trustee, cannot be maintained in equity without the clearest proof that it was made at and with the request, consent, knowledge or instance of the settlor; and a solicitor who takes upon himself to prepare such a deed for execution by his client, without the clearest evidence of the concurrence of the latter, does so subject to all the consequences and liabilities of the deed being set aside, notwithstanding the solicitor may have been influenced by motives for the benefit of his client in preparing the settlement. Therefore, where the plaintiff, alleged by the defendant to be young and extravagant, applied to a solicitor to raise a certain sum on mortgage, and the latter, with a view to prevent the former from dissipating his fortune, tied up the whole of his property, and constituted himself sole trustee; the court, on bill filed by the plaintiff, alleging that the deed of settlement had been prepared without his authority, consent or knowledge, and there not being any evidence to the contrary, declared the deed void in equity, and directed a re-conveyance of the trust property by the trustee. A trustee cannot refuse to re-convey trust property merely because the cestui que trust declines to apologize for an alleged imputation on the trustee; and if a suit for a re-conveyance of the property is occasioned by such refusal and upon such grounds, the trustee will be saddled with all the costs. *Moore v. Prance*, 20 Law J. (N. S.) Chanc. 468.

2. *Family arrangement.*—A deed conveying the property of an intestate upon trusts, in pursuance of an agreement for the division of such property, made, soon after the death of the intestate, between his sister and heiress-at-law, her husband, and her illegitimate son, and which agreement was founded on the supposition that the intestate had made a will disposing of his property in favour of the illegitimate son, which will had not been found: Held, not to be voluntary within the statute of Elizabeth; but supported and enforced against the heiress-at-law and her husband, and also against subsequent purchasers from them for valuable consideration, with notice of the trust deed. Under the agreement and trust deed, other children of the sister and heiress-at-law, both legitimate and illegitimate, besides the child in whose favour it was suggested that a will might have been made, took interests in the property of the intestate; and it was held that the deed was not voluntary as to such other parties,

but that they were within the consideration of the family contract. *Heap v. Tonge*, 9 Hare, 90.

DONATIO MORTIS CAUSA.—*Gifts—Declaration of trust.*—A. lent B. 500*l.* in October, 1843, on which occasion B. wrote and signed the following document: "Received of A. 500*l.*, to bear interest at 4*l.* per cent.," and gave it to A. In June, 1845, A., being dangerously ill, gave the document to her servant with an expression to the effect that she wished the debt to be cancelled. Ten days after the delivery A. died: Held, that this was a donatio mortis causa in favour of B. Gifts of this nature have not been abolished by the Wills Act. A. lent B. 100*l.* in October, 1843, on which occasion B. wrote and signed the following document: "Received of A., for the use of C., 100*l.*, to be paid to her at A.'s death, but the interest at 4*l.* per cent. to be paid to A." Underneath was written, "I approve the above," which was signed by A. This document was given to A. The money was not paid to A. in her lifetime. In June, 1845, A. died: Held, that B. was a trustee for C. of 100*l.* at the death of A. *Moore v. Darton*, 20 Law J. (N. S.) Chanc. 626.

FACTOR.—*Fraud.*—The plaintiff, a merchant in India, consigned goods to A., of Liverpool, to sell on his account, and drew bills against the goods, which A. accepted. A. then placed the goods in the hands of B., his correspondent in London, with instructions to sell them or cause them to be sold, and drew a bill upon B. for 1680*l.*, which B. accepted on the security of the goods, but with notice that the plaintiff had consigned the goods to A. for sale on his account. A. became insolvent, leaving the bills drawn by the plaintiff unpaid. B. paid the bill for 1680*l.*, and then sold the goods for 1300*l.* A bill, filed by the plaintiff against A. and B. for an account and payment by B. of the proceeds of the goods was dismissed with costs. A bill for an account by a principal against his agent is not sustainable where the transaction to which it relates is a single transaction, not tainted with fraud, and the plaintiff has a remedy at law. *Navoulshan v. Brownrigg*, 1 Sim. 573.

HUSBAND AND WIFE.—*Production of documents.*—Where a husband and wife have distinct interests, and the wife is induced, in dealing with those interests, to act under the advice of an attorney employed and paid by the husband, the attorney must be deemed to act as the attorney of both husband and wife, and each of them has a right to call for the production and to have full inspection of all documents that may come into the possession of the attorney during such employment relating to the transactions and to the advice given to the wife. *Warde v. Warde*, 3 M. & G. 365.

INFANT.—*Maintenance—Decree.*—The court directed a reference to appoint a guardian to an infant, and approve of proper maintenance, to be inserted in the decree upon the hearing of a suit, without any petition being presented. *Cross v. Brown*, 20 Law J. (N. S.) Chanc. 560.

INJUNCTION.—1. *Medicines—Breach of confidence.*—The court will restrain by injunction a late partner in a firm for compounding and selling a certain medicine, not patented, from using the secret of the firm, the knowledge of which such partner has obtained surreptitiously, or by communication from a third party, in breach of confidence and good faith. *Morrison v. Moat*, 20 Law J. (N. S.) Chanc. 513.

2. *Sea shore—Right to take stones or shingle.*—The plaintiff, by virtue of a grant from the crown, made 36 Hen. 8, claimed, as lord of the manor of C., to be entitled to the beach or shore of the sea between high and low-water mark. The defendants, the surveyors of highways, took the stones to mend the highway of the parish. Upon a bill filed by the plaintiff against them, the defendants put in their answer denying the right claimed by the plaintiff, and insisting upon their right to take the stones by custom and also by prescription, and also under the Highways Act, 5 & 6 Will. 4, c. 50; and upon a motion to dissolve the injunction obtained by the plaintiff, Held, that the rights claimed by the plaintiff were legal, and must be decided by an action; that the court must consider which of the parties were likely to sustain most injury; that, notwithstanding the want of distinct evidence respecting injury, the court, to prevent a possible mischief, would grant an injunction, and give the plaintiff leave to bring an action, but it refused to say that he must do so. *Clones v. Beck*, 20 Law J. (N. S.) Chanc. 505.

JOINT-STOCK COMPANIES WINDING-UP ACT.—

1. *Contributories.*—The rights and liabilities of the persons concerned in an attempt to form a joint-stock company, which fails, are not affected by the Registration or the Winding-up Acts. Carrick had been a member of the provisional and of the executive committee of a provisionally registered company, and a party to resolutions for the appointment of a surveyor, &c., and had consented to take a share or shares, and a letter of allotment of a certain number was sent to him. He had also contributed to a fund raised, after the abandonment of the undertaking, for defraying the expenses incurred by the company. On these grounds, the master placed his name on the list of contributories; but, as there was no distinct evidence of his acceptance of shares, or that expense had been incurred in consequence of the resolution, or, if any expense had been incurred, that it remained unliquidated or had been liquidated by those who were entitled to call upon him for contribution, the court ordered his name to be struck off the list, but gave the official manager liberty to apply to the master to restore it, if he could show that the debts remaining to be discharged were debts for which Carrick was liable. *In re Carrick's case*, 1 Sim. 505.

2. *Same.*—A. had been a member of the provisional committee, and had accepted shares in a company which was ordered to be wound up. The master placed A.'s name on the list as a contributory to the expenses of the committee incurred between the 14th of October, 1845, the day on which he accepted his shares, and the 30th

of November, 1845, on or before which day the company ought, according to the standing orders, to have deposited their plans, &c., in order to obtain an act of incorporation in the then next session; but they did not do so, nor did they, after that day, take any step towards the establishment of the company: Held, that A. was liable to contribute to the expenses incurred between the 14th of October and 30th of November, 1845, both inclusive; but was not liable to contribute to the expenses incurred before the former day or after the latter. *In re Direct Birmingham, Oxford, Reading and Brighton Railway Company, (Bright's case)*, 1 Sim. 602.

LANDS CLAUSES CONSOLIDATION ACT, 1845, 68th section.—*Wharf—Access obstructed—Compensation.*—A harbour improvement company in the prosecution of their works erected a cofferdam, which prevented ships from approaching the defendant's wharves, and he was in consequence put to some additional expense in the carriage of his goods; he claimed compensation for the alleged injury, and proceeded to appoint an arbitrator, under the Lands Clauses Consolidation Act, 1845, (8 Vict. c. 18, s. 68,) but upon a bill filed by the company the court restrained his further proceedings until he had established his right at law. *Sutton Harbour Improvement Company v. Hitchens*, 20 Law J. (N. S.) Chanc. 489.

Same, ss. 80, 82.—*Land—Taxing master.*—The South Wales Railway Company took some land, part of a copyhold estate, which was vested in a trustee, who died leaving an infant heir. The company having required a surrender of the lands to be made to them, the parties beneficially entitled to the estate presented their petition, under the 11 Geo. 4 & 1 Will. 4, c. 60, and obtained an order that a party should in the place of the infant surrender the whole estate to a new trustee, who surrendered to the company the land taken by them for the purpose of their undertaking. Upon a petition by the railway company, objecting to the payment of the costs of and incident to this petition: Held, that the taxing master was wrong in allowing, as against the company, the costs of procuring a new trustee and tenant. *In re South Wales Railway Company*, 20 Law J. (N. S.) Chanc. 534.

LEGACY.—*Exception.*—1. A gift to all the grandchildren of the testatrix "with the exception of one, viz. —," established as a gift to the class, not affected by the incomplete exception. *Illingworth v. Cooke*, 9 Hare, 37.

2. *Receipt.*—Testator gave the produce of his share and interest in his co-partnership business to his wife, and also the interest of the capital sum of 1000*l.* for her sole use and benefit, free from the debts or control of any husband she might marry, and her receipt to be a sufficient discharge to his executors; and he gave all his furniture, plate, &c. to her absolutely: Held, that the gift of the interest of the 1000*l.* passed the principal. *Humphrey v. Humphrey*, 1 Sim. 536.

LUNACY.—1. Order made, on the application of the curator of a lunatic resident in Holland, for the transfer to him of the corpus of funds in England to which the lunatic was entitled. *In re Elias*, 3 M. & G. 234.

2. *Act 1 Will. 4, c. 65.*—The 28th section of the act 1 Will. 4, c. 65, confers no power to sell the right to the next presentation to a rectory of the advowson of which a lunatic is tenant in tail in possession, except for one of the purposes specified in the section. *In re Vavasour*, 3 M. & G. 275.

3. *Next of kin.*—Order, in the nature of a stop-order, granted on the application of the assignees of the interest of the sole next of kin of a lunatic, but dispensing with notice to the assignees of any application in the matter except those respecting payments to the next of kin. *In re Pigott*, 3 M. & G. 268.

4. *Petition.*—A party cannot be heard against the confirmation of the master's report in lunacy, without presenting a cross petition, in the nature of exceptions to the master's report. *In re Saunders*, 3 M. & G. 219.

5. *Reference.*—The Lord Chancellor declined to order the transfer of funds standing in the joint names of the lunatic and another to the party claiming such transfer, without a previous reference to the master. *In re Were*, 3 M. & G. 233.

6. *Tenant for life.*—A. B. being devisee for life of premises, with a condition against committing any manner of waste, and for keeping the same in good and tenantable repair, became lunatic, and the premises were subsequently destroyed by accidental fire. A petition was then presented by the committee of the person, who was also remainder-man: prayer, a declaration that the premises ought to be rebuilt at the expense of the lunatic's estate, and a reference as to the amount of such expense, and out of what fund it ought to be defrayed. The Lord Chancellor made an order for the reference, holding that the words of the will created an obligation upon the tenant for life to rebuild the premises, and that the question of such liability was rightly brought before the court on the petition. *In re Skingley*, 3 M. & G. 221.

7. *Trustee Act, 1850.*—Order made under the Trustee Act, 1850, appointing a new trustee, and vesting the trust premises in him jointly with the continuing trustees, in a case where one of three trustees was a lunatic, and though the will contained a power to appoint new trustees. The Trustee Act, 1850, does not give to the Lord Chancellor of Great Britain, sitting in lunacy, jurisdiction over lands in Ireland. *In re Davies*, 3 M. & G. 278.

MARRIAGE SETTLEMENT.—*Real or personal estate.*—Under a marriage settlement, the trustees were directed to invest a sum of money in the purchase of real estate, to be conveyed to the use of Lord Harcourt for life, with remainder, subject to certain terms of years for raising different sums of money, to the use of the right heirs of Lord Harcourt for ever. The money remained uninvested in lands for upwards of fifty years, and was dealt with by Lord Harcourt in the same manner as the rest of his personal property: Held, that it was not necessary for a party to express a strict intention to convert, and that the circumstances of this case were sufficiently strong to show that Lord Harcourt had elected to take this trust

money as personal property. *Harcourt v. Seymour, Seymour v. Lord Vernon*, 20 Law J. (N. S.) Chanc. 606.

MORTGAGOR AND MORTGAGEE.—*Redemption, right of.*—A mortgagee of a reversionary interest in stock, filing a bill to realize his security, is entitled to a decree for foreclosure in default of payment, that being the ordinary method whereby the court excludes the right of redemption; and although he may, in some cases, be entitled to a decree for sale, there is no rule or practice of the court which compels him to submit to such a decree. *Wayne v. Hanham*, 9 Hare, 62.

MOTION.—*Costs—Serving warrants on plaintiff in one suit to attend proceedings in another suit.*—The court, on motion by consent, ordered the plaintiff in one suit to serve the plaintiff in another with warrants to attend before the master in proceedings in the first suit. *Hills v. Macrae, Davies v. Macrae*, 20 Law J. (N. S.) Chanc. 533.

POWER.—*Trustees.*—A power of sale in a settlement was given to A. and B., the trustees to preserve contingent remainders, and the survivor of them, and the executors and administrators of the survivor: Held, that trustees appointed by the court in the place of A. and B. could not exercise the power. *Newman v. Warner*, 1 Sim. 457.

PRACTICE.—1. Order made by the Lord Chancellor staying proceedings to enforce further answer, pending an appeal from the order by which the defendant's answer was declared insufficient. *Stainton v. Chadwick*, 3 M. & G. 343.

2. Security for costs ordered to be given in a suit in which a married woman was plaintiff by her next friend, the next friend being a labourer. *Stevens v. Williams*, 1 Sim. 545.

3. A defendant served with a copy of a bill under the 23rd Order of the 26th August, 1841, must be re-served if the bill is amended. *Vincent v. Watts*, 3 M. & G. 248.

4. Practice as to lunatic answering, where he is made defendant to a bill filed by the committee of his person and estate. *Worth v. Mackenzie*, 3 M. & G. 363.

5. *Costs.*—Order made for the payment out of the Suitors' Fee Fund Account of costs incurred by an officer of the court in defending legal proceedings instituted against him, in consequence of the performance of his duties. *Ex parte Allen*, 3 M. & G. 360.

6. *Nonpayment of money.*—The Lord Chancellor has no jurisdiction, under the 17th Rule of the 15th section of the act 1 Will. 4, c. 36, to discharge a party in custody for the nonpayment of a sum of money ordered to be paid in a suit. *Dev v. Clark*, 3 M. & G. 357.

PRINCIPAL AND SURETY.—*Construction of deeds.*—The creditor must make a full, fair and honest communication to the surety of all circumstances connected with the transaction to which the suretyship is to be applied, which are calculated to influence the discretion of the surety in entering into the required obligation.

How far is the creditor responsible for the misrepresentation or non-communication of material circumstances by the debtor, where there is no communication between the creditor and the surety, and particularly in a case where the creditor desires his debtor to procure the suretyship contract, and abstain from all communication with the surety, *quære*. The general law being that the creditor discharges a surety by any dealing or arrangement with the principal debtor, without the surety's assent, which at all varies the situation, rights or remedies of the surety—Will the surety be discharged in a case where the creditor precludes himself by covenant from suing the debtor, except in certain events, those events not comprising all that might reasonably stimulate the creditor to sue, if his power or discretion were unfettered; and what would be the effect in such a covenant of a reservation to the creditor of a power to sue the debtor, if required to do so by the surety, *quære*. Assuming that if the remedies are reserved against the surety, the liability of the surety is not discharged by an arrangement between the creditor and debtor, which does not alter the rights and position of the surety in regard to the creditor or debtor, it must still in each case be considered whether the arrangement between the creditor and debtor did in law or equity affect the surety and his rights, and whether the reservation of the remedy against the surety is such that the liability of the surety may be enforced to its full extent consistently with the compact between the creditor and debtor. In the case of a bond given by one of several joint debtors, the legal effect of which is to merge the simple contract debt, can this effect be controlled by the parties agreeing by a separate instrument that such bond shall be deemed a collateral security only, and that all remedies shall remain for the simple contract debt as if the bond had not been taken, *quære*. The granting of a receiver is a matter of discretion, to be governed by a view of the whole circumstances of the case, one of such circumstances being the probability of the plaintiff being ultimately entitled to a decree. Thus a receiver was refused in a case where important points arose upon the construction of deeds, that construction being attended with considerable doubt and difficulty. *Owen v. Homan*, 3 M. & G. 378.

PRODUCTION OF DOCUMENTS.—*Agents.*—Production of maps, plans and other documents made by land agents in the course of their employment, and to facilitate them in letting the farms and in computing the rents, and also the fines to be paid by copyhold tenants, will be ordered, though it was alleged that they were made for private use, and were not paid for by the principal, and that the cost was not covered by the poundage which it had been agreed the agents should receive. *Beresford v. Driver*, 20 Law J. (N. S.) Chanc. 476.

PUBLIC COMPANY.—*Injunction—Damage.*—The words “injuriously affected” in the 68th section of the Lands Clauses Consolidation Act, 1845, (8 Vict. c. 18,) comprehend cases of damage arising from the user of the railway as well as of damage sustained

in the construction of the railway. Injunction obtained by a company restraining a landowner from taking proceedings under the act in respect of such damage dissolved. *London and North Western Railway Company v. Bradley*, 3 M. & G. 336.

RELEASE.—*Judgment creditor.*—By a deed conveying the real and personal estate of a debtor to trustees for the benefit of his creditors, the creditors executing the deed covenanted that it should operate and enure, and might be pleaded in bar, as a good and effectual release and discharge of all and all manner of actions, suits, bills, bonds, writings, obligations, debts, duties, judgments, extents, executions, claims and demands, both at law and in equity, which they or any of them had or might have against the debtor or his estate or effects, for or by reason of all or any of the debts or engagements to them respectively due or owing by him, such covenant not to destroy any mortgage, pledge, lien or other specific security which any creditor possessed: Held, upon the construction of the entire deed, that such general words had not the effect of releasing a judgment previously obtained by one of the creditors who executed the deed, so as to affect the priority of the creditor as between himself and a judgment creditor who was not a party to the deed, or so as to preclude the judgment creditor who executed the deed from enforcing the right which the judgment gave him as against the estate vested in the trustees. A judgment creditor, who had executed a deed, whereby the real and personal estate of the debtor were conveyed to trustees for the benefit of such of his creditors as should execute the deed, assigned his judgment to such trustees: Held, that the trustees could not be considered as owners of the trust estate, so that the assignment by the judgment creditor would have the effect of merging the judgment; that the judgment creditor having assigned his judgment to the trustees of a creditors' deed, in trust for the benefit of the creditors who had executed the deed (of whom he was himself one), was entitled to sue on behalf of himself and all such other creditors for the establishment of their rights in respect of the trust estate and the execution of the trusts. *Squire v. Ford*, 9 H. 47.

SERVICE OF SUBPŒNA.—*Process civil and criminal.*—Upon motion for leave to enter an appearance for a defendant who was alleged to have absconded to avoid criminal process: Held, that process included civil and criminal process, and the motion was granted. *Allen v. Loder*, 20 Law J. (N. S.) Chanc. 658.

SOLICITOR.—*Costs.*—The rule which allows a solicitor, being also a trustee and a party to a cause, to charge full costs, where he acts in the suit for a body of trustees, of which he himself is one, does not apply to the case of a solicitor being a trustee and acting as solicitor for himself and his co-trustees in the administration of the trust estate out of court. *Lincoln v. Windsor*, 9 H. 158.

SPECIFIC PERFORMANCE.—*Costs.*—A. agreed to purchase part of an estate, on the faith of representations made to him by the vendor's agent, that the vendor would do certain acts on the

remainder of the estate. Those acts, however, were not done, in consequence of which the value of the land purchased was considerably diminished. A bill for specific performance, filed by persons claiming under the vendor, was dismissed with costs. *Myers v. Watson*, 1 Sim. 523.

TITLE DEEDS.—*Mortgage—Equitable deposit.*—A bond creditor having obtained possession of the title deeds of certain real estate was held, in the absence of any evidence of an agreement for a deposit, not to be an equitable mortgagee, and the court refused to direct any inquiry. *Chapman v. Chapman*, 20 Law J. (N. S.) Chanc. 405.

TRUST.—*Cestuis que trust—New trustees, payment to.*—E. M. N. and his wife, under a power in their marriage settlement, directed the trustees after the decease of the survivor of them to receive a sum of 3000*l.*, and pay it to their three daughters equally. F. M. N., one of the daughters, upon her marriage with S. D., assigned all her interest in the appointed fund by way of settlement to C. R. and T. R. Upon C. R. requiring to be discharged from being a trustee, J. L., who had never accepted the trusts, executed a deed of disclaimer, upon which B. W. N. and J. N. were appointed trustees in the place of C. R., and J. L. and C. R. assigned the trust fund to them, but the trustees of the original settlement alleged that J. L. had accepted the trusts, and that B. W. N. and J. N. were not trustees, and they refused to pay the share of F. M. N. to them: Held, upon a bill filed by B. W. N. and J. N., that they were duly appointed trustees; and upon an objection for want of parties, that the cestuis que trust and J. L. were not necessary parties to the suit; that the capital and dividends of F. M. N.'s share ought to be transferred to the trustees; that the costs of the suit ought to be paid out of the trust funds; and that the defendant was not entitled to any costs of the objection for want of parties, but that the plaintiffs were entitled to their costs out of the trust funds. *Noble v. Meymott*, 20 Law J. (N. S.) Chanc. 612.

TRUSTEE ACT, 1850.—1. *Sect. 32—Jurisdiction.*—The court has not jurisdiction under the Trustee Act, 1850, to take away the power of appointing new trustees from the donee of the power, where the donee is capable of exercising, and willing to exercise, the power, although such donee may have disclosed an intention or desire to exercise his power corruptly. *In re Hodson's Settlement and Trustee Act*, 9 Hare, 118.

2. *Sect. 19—Mortgage—Redemption, equity of.*—The 19th section of the Trustee Act, 1850, does not enable the court, on the petition of the administrator of a mortgagee in fee, who has died intestate, and whose heir is unknown, to vest the mortgaged estate in such administrator, subject to the equity of redemption, the mortgage debt remaining unpaid. *In re Meyrick's Estate and Trustee Act*, 9 Hare, 116.

3. *Vesting order.*—A vesting order under the Trustee Act of 1850, is not applicable where a new trustee of real estate is appointed by the court to act jointly with a continuing trustee, the effect of such an

order being to sever their joint tenancy; therefore, in such cases, a conveyance of the real estate to the use of the new and continuing trustee is requisite. *In re Plyer's Trust*, 20 Law J. (N. S.) Chanc. 529.

VENDOR AND PURCHASER.—*Particular of sale—Compensation.*—A surplus of about nineteen acres in one lot of land purchased under conditions of sale, and stated in the particulars taken from a former erroneous survey to contain seventy acres, twenty-four perches, more or less, and a deficiency of about ten acres and three quarters in three several lots, stated in the same particular to contain together three hundred and twenty-one acres, two roods, and thirty perches, more or less, one of the conditions providing for compensation for any error in the particulars, and there being no intention of the vendors to sell the property in the lump: Held, on special case, to be respectively subjects of mutual compensation by the vendors and purchaser. *Leslie v. Thompson*, 20 Law J. (N. S.) Chanc. 561.

WATERCOURSE.—*User—Acquiescence—Injunction.*—Permission was obtained from E. and other landowners, on behalf of a body of subscribers, to make a watercourse through their respective lands, to supply the town of G. with water. It was alleged that the subscribers agreed to pay to E. 2s. 6d. a year, but this was denied. E. subsequently diverted the watercourse into the old channel, and upon a bill filed by several of the subscribers: Held, upon its being amended and made on behalf of the plaintiffs, and others whose names and residences were unknown, being subscribers to the fund, that the plaintiffs were entitled to the use of the watercourse passing under the lands of E., and an injunction was granted to restrain the defendant from preventing, obstructing or interfering with the flow of water, or with the plaintiffs' use of the watercourse. *Devonshire (Duke of) v. Elgin*, 20 Law J. (N. S.) Chanc. 495.

WILL.—Testator gave 4000*l.* to his grand-daughter, and directed his executors to pay it to her on her attaining twenty-one, and to apply the interest of it for her maintenance during her minority. By a codicil he directed that his grand-daughter should have only the interest of 2000*l.* for her maintenance, until she attained twenty-three, and that the interest of the other 2000*l.* should be accumulated, and that, on her attaining twenty-three, his executors should have the whole settled upon her for her life, and, after her death, to her child or children, in equal proportions, so that no husband of hers might spend it. The grand-daughter attained twenty-three, and died without having had a child, and without the executors having made any settlement of the legacy: Held, that the gift in the will was an absolute gift, and that, in the events that had happened, it was not affected by the codicil. *Bell v. Jackson*, 1 Sim. 547.

2. *Charitable uses.*—Bequest by a will of a sum of money to be applied to the restoration of the Jews to Jerusalem and their own land: Held to be void. *Habershon v. Vardon*, 20 Law J. (N. S.) Chanc. 549.

3. *Deceased partner*.—A gift and devise, by one of the partners in a cotton mill, of all his property, estate and effects to trustees, upon trust to lay out and invest two-third parts thereof upon real or good personal security, or to transfer the same and allow it to remain in the concern of which he was one of the copartners, in the names of his trustees, and alter, vary, change and transpose the same as they should think fit, and stand possessed of the same, upon trust for the two sons of the testator, with certain powers of advancement out of their respective shares: Held, to authorize the executors to continue the monies of the testator in the trade, but not to trade with the monies by becoming partners in the firm. The surviving partners of a testator, dealing with the property of the testator with the knowledge that it belongs to his estate, are bound to inquire into the trusts on which it is held, and are liable as if they had actual notice of those trusts. A suit by parties beneficially interested in the estate of a deceased partner cannot be maintained against both his executors and surviving partners in the absence of special circumstances; but collusion is not the only ground for such a suit, and it may be maintained where the relation between the executors and surviving partners is such as to present a substantial impediment to the prosecution by the executors of the rights of the parties interested in the estate as against such partners. *Travis v. Milne, Milne v. Milne*, 9 Hare, 141.

4. *Interest*.—Testator directed the dividends of his residue to be paid to his three children, A., B. and C., in certain shares, and that, after the decease of any one or two of them, until the decease of the survivor, the shares of the deceased parents should go to their respective children; and that, after the decease of his surviving child, the capital of the residue should be divided amongst the children of his said children per capita. A. died first, B. next, and C. last. Both A. and C. left children, some of whom were living at C.'s death. B. had children, but they all died in her lifetime: Held, nevertheless, that they took vested transmissible interests in the dividends of B.'s share of the residue, which accrued between B.'s and C.'s deaths. *Homer v. Gould*, 1 Sim. 541.

5. *Limitations*.—John William, Earl of Bridgewater, devised his freehold estates to trustees, in trust to convey them to the use of Lord Alford, his great nephew, for ninety-nine years, if he should so long live; remainder to trustees and their heirs during the life of Lord Alford, in trust to preserve contingent remainders; remainder to the use of the heirs male of the body of Lord Alford, with divers remainders over: provided that if Lord Alford should die not having acquired the title of Duke or Marquis of Bridgewater, the estate directed to be limited to the heirs male of his body should cease, and the estates should thereupon go over and be enjoyed according to the subsequent uses and limitations directed by his will. Lord Alford died, leaving a son, but without having acquired the title: Held, that the proviso was valid. *Egerton v. Lord Brownlow*, 1 Sim. 464.

WITNESS.—*Examination of plaintiff vivâ voce*.—The court has no jurisdiction to order a plaintiff to be examined vivâ voce before a master under a decree. *Ward v. Homfray*, 20 L. J. (N.S.) Chanc. 556.

List of Cases.

COMMON LAW.

	PAGE		PAGE
Alhusen v. Prest, 20 L. J. (N. S.)	21	Collett v. London and North-Western Railway Company, 20 L. J. (N. S.) Q. B. 411	27
Armistead v. White, 20 L. J. (N. S.) Q. B. 524	16	Cort v. Ambergate, Nottingham, Boston and Eastern Junction Railway Company, 20 L. J. (N. S.) Q. B. 460	29
Attorney-General v. Metcalfe, 6 Exch. 26	19	De Haber v. Portugal (Queen of), Wadsworth v. Spain (Queen of), 20 L. J. (N. S.) Q. B. 488	24
Austin v. Manchester, Sheffield and Lincolnshire Railway Company, 20 L. J. (N. S.) Q. B. 440	26	Dews v. Ryley, 20 L. J. (N. S.) C. B. 264	7
Bailey v. Haines, Baxter v. Bracebridge, 8 C. B. 533	1	Doe d. Baddeley v. Massey, 20 L. J. (N. S.) Q. B. 434	13
Banks v. Rebeck, 20 L. J. (N. S.) Q. B. 476	7	— v. Challis, 20 L. J. (N. S.) Q. B. 478	12
Beaucher v. Hook, in error, 20 L. J. (N. S.) Q. B. 485	23	— d. Davies v. Thomas, 20 L. J. (N. S.) Exch. 367	17
Beldon v. Campbell, 20 L. J. (N. S.) Exch. 342	30	— d. France v. Andrews, 15 Q. B. 756	18
Blair v. Ormond, 20 L. J. (N. S.) Q. B. 444	10	— d. Hudson v. Leeds and Bradford Railway Company, 20 L. J. (N. S.) Q. B. 486	25
Boosey v. Jeffries, 20 L. J. (N. S.) Exch. 354	5	— d. Palmer v. Eyre, 20 L. J. (N. S.) Q. B. 431	19
Browne v. Collyer, 20 L. J. (N. S.) Q. B. 426	2	— d. Starling v. Prince, 20 L. J. (N. S.) C. B. 223	31
Buchanan v. Kinning, 20 L. J. (N. S.) C. B. 252	7	— d. Whittington v. Hards, 20 L. J. (N. S.) Q. B. 406	13
Burnett v. Phillips, 20 L. J. (N. S.) Exch. 337	20	Drew v. Collins, 20 L. J. (N. S.) Exch. 369	3
Butt v. Great Western Railway Company, 20 L. J. (N. S.) C. B. 241	4	Eaton v. Swansea Waterworks Company, 20 L. J. (N. S.) Q. B. 482	24
Carne v. Malins, 20 L. J. (N. S.) Exch. 434	2	Ellis v. Reg. 20 L. J. (N. S.) Exch. 348	13
Chelsea Waterworks (Governor and Company of) v. Bowley, 20 L. J. (N. S.) Q. B. 550	16	Hare v. Fleay, 20 L. J. (N. S.) C. B. 49	2
Clay v. Crofts, 20 L. J. (N. S.) Exch. 361	30		
Coe v. Platt, 20 L. J. (N. S.) Exch. 407	14		

	PAGE		PAGE
Harris v. Montgomery, 20 L. J. (N. S.) C. B. 221	21	Reg. v. York, Newcastle and Berwick Railway Company, 20 L. J. (N. S.) Q. B. 505	17
Hart v. Baxendale, 20 L. J. (N. S.) Exch. 338	3	Richardson v. South-Eastern Railway Company, 20 L. J. (N. S.) C. B. 236	17
Heslop v. Baker, 20 L. J. (N. S.) Exch. 350	3	Rosetto v. Gurney, 20 L. J. (N. S.) C. B. 251	20
Hewitt v. Paterson, 20 L. J. (N. S.) Exch. 337	6	Scott v. De Richebourg, 20 L. J. (N. S.) C. B. 263	6
Homersham v. Wolverhampton Waterworks Company, 6 Exch. 137	6	Simms v. Marryat, 20 L. J. (N. S.) Q. B. 454	33
James v. Whitbread, 20 L. J. (N. S.) C. B. 217	10	Sivewright v. Archibald, 20 L. J. (N. S.) Q. B. 528	28
Johns v. Dickenson, 8 C. B. 934 ..	25	Smith v. Cartwright, 20 L. J. (N. S.) Exch. 401	8
Jones v. Davies, 20 L. J. (N. S.) Exch. 433	32	— v. Howell, 20 L. J. (N. S.) Exch. 377	8
— v. Johnson, 6 Exch. 133	6	South-Eastern Railway Company v. The Queen, 20 L. J. (N. S.) Q. B. 428	26
Kirk v. Unwin, 20 L. J. (N. S.) Exch. 348	3	Stairbank v. Fenning, 20 L. J. (N. S.) C. B. 226	30
Longmeid v. Holliday, 20 L. J. (N. S.) Exch. 430	4	Sunderland Marine Insurance Company v. Kearney, 20 L. J. (N. S.) Q. B. 417	22
Lowe v. Carpenter, 20 L. J. (N. S.) Exch. 375	23	Swansea Dock Company v. Levier, 20 L. J. (N. S.) Exch. 447	4
Massey v. Goodall, 20 L. J. (N. S.) Q. B. 526	17	Symons v. May, 20 L. J. (N. S.) Exch. 414	16
Mosley v. Hide, 20 L. J. (N. S.) Q. B. 539	32	Tarleton v. Liddell, 20 L. J. (N. S.) Q. B. 507	12
Owens v. Breese, 20 L. J. (N. S.) Exch. 359	33	Tobacco Pipe Makers, Master Warder of, &c. v. Loder, 20 L. J. (N. S.) Q. B. 414	5
Page v. More, 15 Q. B. 684	1	Turner v. Trustees of the Liverpool Docks, 20 L. J. (N. S.) Exch. 393	31
Pears v. Wilson, 20 L. J. (N. S.) Exch. 381	33	Walsh v. Southworth, 6 Exch. 150	22
Plasterers' Company v. Parish Clerks' Company, 20 L. J. (N. S.) Exch. 362	12	Williams v. The Commissioners for executing the Office of Lord High Admiral, 20 L. J. (N. S.) C. B. 245	23
Power v. Jones, 6 Exch. 121	22	— v. Morgan, 15 Q. B. 782 ..	13
Reg. v. Cotton, 15 Q. B. 569	14		
— v. Freeman of Leicester, Deputies of, 15 Q. B. 671	20		
— v. London and North-Western Railway Company, 20 L. J. (N. S.) Q. B. 399	27		
— v. Rochester, Dean and Chapter of, 20 L. J. (N. S.) Q. B. 467	15		
— v. St. Martin-in-the-Fields, Guardians of, 20 L. J. (N. S.) Q. B. 423	25		

CRIMINAL AND MAGISTRATES.

	PAGE		PAGE
Askew, In re, 20 L. J. (N. S.)		In re Vestrymen of the Poor of	
M. C. 241	34	St. James', Westminster, 20 L. J.	
Reg. v. Dale, 20 L. J. (N. S.)		(N. S.) M. C. 236	35
M. C. 240	35	Reg. v. Scaife, 20 L. J. (N. S.)	
— v. Poor Law Commissioners,		M. C. 229	34

EQUITY.

Allen, Ex parte, 3 M. & G. 360 ..	47	Habershon v. Vardon, 20 L. J. (N. S.)	
— v. Loder, 20 L. J. (N. S.)		Chanc. 549	52
Chanc. 658	49	Harcourt v. Seymour, Seymour v.	
Askew v. Millington, 9 H. 66	37	Lord Vernon, 20 L. J. (N. S.)	
Bassil v. Lister, 20 L. J. (N. S.)		Chanc. 606	47
Chanc. 641	36	Heape v. Tonge, 9 H. 90	43
Bell v. Jackson, 1 Sim. 547	51	Hills v. Macrae, Davies v. Macrae,	
Beloved Wilkes' Charity, In re, 20		20 L. J. (N. S.) Chanc. 533 ..	40, 47
L. J. (N. S.) Chanc. 588	39	Hodson's Settlement and Trustee	
Beman v. Rufford, 1 Sim. 550	38	Act, In re, 9 H. 118	50
Beresford v. Driver, 20 L. J. (N. S.)		Homer v. Gould, 1 S. 541	52
Chanc. 476	48	Humphrey v. Humphrey, 1 S. 536..	45
Bullivant v. Bellairs, 20 L. J. (N. S.)		Illingworth v. Cooke, 9 H. 37	45
Chanc. 149	37	Jefferies v. Biggs, 20 L. J. (N. S.)	
Carrick's case, In re, 1 Sim. 505 ..	44	Chanc. 638	40
Chapman v. Chapman, 20 L. J.		Kemp v. Sober, 1 S. 517	42
(N. S.) Chanc. 465	50	Leslie v. Thompson, 20 L. J. Chanc.	
Clowes v. Beck, 20 L. J. (N. S.)		571	51
Chanc. 515	44	Lincoln v. Windsor, 9 H. 158	49
Cross v. Brown, 20 L. J. (N. S.)		London and North Western Rail-	
Chanc. 560	43	way Company v. Bradley, 3 M.	
Cutler's Trust, In re, 20 L. J. (N. S.)		& G. 336	49
Chanc. 504	38	Meyrick's Estate and Trustee Act, In	
Davies, In re, 3 M. & G. 278	46	re, 9 H. 116	50
Devonshire, Duke of, v. Elgin, 20		Moore v. Darton, 20 L. J. (N. S.)	
L. J. (N. S.) Chanc. 495	51	Chanc. 626	43
Dew v. Clark, 3 M. & G. 357	47	— v. Prame, 20 L. J. (N. S.)	
Direct Birmingham, Oxford, Read-		Chanc. 468	42
ing and Brighton Railway Com-		Morrison v. Moat, 20 L. J. (N. S.)	
pany, In re Bright's case, 1 Sim.		Chanc. 513	44
602	45	Myers v. Watson, 1 S. 523	50
Eccles v. Cheyne, 20 L. J. (N. S.)		Navoulshaw v. Brownrigg, 1 Sim.	
Chanc. 631	40	573	43
Egerton v. Brownlow (Lord), 1 Sim.		Newman v. Warner, 1 S. 457	47
464	52	Noble v. Meymott, 20 L. J. (N. S.)	
Elias, In re, 3 M. & G. 234	45	Chanc. 612	50
Gilpin v. Magee, 20 L. J. (N. S.)		Owen v. Homan, 3 M. & G. 378 ..	48
Chanc. 639	39	Pigott, In re, 3 M. & G. 268	46

	PAGE		PAGE
Plyer's Trust, In re, 20 L. J. (N. S.)		Steele, In re, 20 L. J. (N. S.)	Chanc.
Chanc. 529	51	562	41
Preston v. Liverpool, Manchester &		Stevens v. Williams, 1 S. 545	47
Newcastle-upon-Tyne Junction		Strachan's Estate, In re, 20 L. J.	
Railway Company, 1 S. 586..	37	(N. S.) Chanc. 511	41
Robins v. Hobbs, 9 H. 122	38	Sutton Harbour Improvement Com-	
Robinson v. Turner, 9 H. 129	40	pany v. Hitchins, 20 L. J. (N.	
Rochdale Canal Company v. King,		S) Chanc. 489	45
20 L. J. (N. S.) Chanc. 675..	36	Tapp v. Tanner, 20 L. J. (N. S.)	
Salmon v. Dean, 3 M. & G. 344..	38	Chanc. 559	41
Saunders, In re, 3 M. & G. 219 ..	46	Travis v. Milne, Milne v. Milne, 9	
Scott v. Hastings (Lord), 9 H. 35..	40	H. 141	52
Skingley, In re, 3 M. & G. 221....	46	Vavasour, In re, 3 M. & G. 275 ..	46
Sneed v. Sneed, 20 L. J. (N. S.)		Vincent v. Watts, 3 M. & G. 248..	47
Chanc. 630	41	Ward v. Homfray, 20 L. J. (N. S.)	
South Wales Railway Company, In		Chanc. 556	52
re, 20 L. J. (N. S.) Chanc. 534	45	Warde v. Warde, 3 M. & G. 365..	43
Squire v. Ford, 9 H. 47	49	Watts v. Jeffereys, 3 M. & G. 372 .	37
St. James's Club, In re, 20 L. J. (N.		Wayne v. Hanham, 9 H. 62	47
S.) Chanc. 630	41	Webb v. Direct London and Ports-	
St. John's Hospital, In re, 3 M. & G.		mouth Railway Co., 9 H. 129 .	41
235	41	Were, In re, 3 M. & G. 233	46
Stainton v. Chadwick, 3 M. & G.		Woods, In re, 3 M. & G. 269	38
343	47	Worth v. Mackenzie, 3 M. & G. 363	47

Digest of Cases.

COMMON LAW.

Comprising the Common Law Cases (not previously inserted) in the following Reports :—

13 Queen's Bench Reports, part 2.	9 Common Bench, part 1.
15 Queen's Bench Reports, part 4.	6 Exchequer Reports, parts 2, 3.
21 Law Journal (N. S.), parts 1, 2, 3.	

AFFIDAVITS INTITULED IN NEW NAME.—*Change of Name of Railway.*—Where, pending an action against a company, the name of the company is changed by act of parliament, and a motion is afterwards made in such action, a suggestion should be entered of the change of name, and the affidavits intituled in the new name. *Hebblethwaite v. Leeds and Thirsk Railway Company*, 21 Law J. (N. S.) Exch. 37.

BANKER.—*Crossed cheque—Negligence.*—The crossing of a cheque, payable to bearer, with the name of a banker, does not restrict its negotiability to such banker alone. Such crossing is, however, so far a protection to the owner of the cheque, that the banker upon whom the cheque is drawn ought not to pay it, except through a banker, for if he does so, and the person actually presenting it turns out not to be the lawful holder, the circumstance of his so paying would be strong evidence of negligence on the part of the banker, in the event of his seeking to claim credit against his customer for the amount. The banker's duty is the same where the crossing is by the customer, or by any intermediate holder, or where the original crossing is erased, and the name of another banker written instead of it. In an action against bankers for money lent, to which the defendants pleaded payment, it appeared that the plaintiffs had drawn a cheque on the defendants crossed thus, "Bank of England, for account of the Accountant-General." The payee, to whom this cheque was delivered, struck out the crossing by running a pen through it, leaving it, however, perfectly legible, and crossed it a second time with the name of his own bankers, and paid it into their bank to the credit of his own account. The cheque being presented by them for payment, was paid by the defendants, who charged it to the debit of the plaintiff's account. The payee appropriated the sum so received to his own purpose, and it never was paid to the accountant-general; and

the plaintiffs, who were trustees, were obliged to pay the amount themselves: Held, that the circumstance of this cheque being thus doubly crossed, afforded no additional evidence of negligence against the defendants. *Bellamy v. Majoribanks*, 21 Law J. (N. S.) Exch. 70.

BILL OF EXCHANGE.—1. 7 & 8 Vict. c. 110.—A bill of exchange, drawn on a completely registered joint-stock company by its corporate name, was accepted by two of the directors of the company as follows: "Accepted, J. B. and E. N., directors of the C. company, appointed by resolution to accept this bill." The bill was sealed with the corporate seal, having the corporate name of the company circumscribed, and was countersigned by the secretary: Held, in an action upon the bill against the company, that the bill sufficiently expressed upon the face of it that it was accepted on behalf of the company within the 45th section of the 7 & 8 Vict. c. 110, and that the company were liable upon the bill. *Edwards v. Cameron's Coalbrook Steam Coal and Swansea and Loughor Railway Company*, 6 Exch. 269.

2. *Plea.*—Satisfaction of a bill as between a drawer or indorser and an indorsee, whether before or after the bill becomes due, does not necessarily enure as a satisfaction on behalf of the acceptor, or operate to discharge him from liability to the indorsee. To a count on a bill of exchange for 49*l.* by indorsees against the acceptor, the latter pleaded that after the indorsement and before the commencement of the action, the drawer delivered to the plaintiffs, and the plaintiffs accepted, goods of the value of 50*l.*, in satisfaction and discharge of the bill, and of all damages and causes of action in respect thereof; and that the plaintiffs, from the time of the said satisfaction of the bill, had always held the same, and that the plaintiffs had commenced the action and prosecuted the same against and in opposition to the will and consent of the drawer: Held, after verdict for the defendant, that the plea was no bar to the plaintiff's right to recover against the defendant on the bill. *Jones v. Broadhurst*, 9 C. B. 173.

BRIDGE COMPANY.—38 Geo. 3, c. 60.—By the 38 Geo. 3, c. 5, which was an act for granting a land tax for the year 1798, it was enacted, that all manors, messuages, lands, tenements, &c., tolls, &c., and all hereditaments, of what nature or kind soever they be, situate, lying and being, happening or arising, should be charged to the land tax. By the 38 Geo. 3, c. 60, for making the land tax perpetual, it was enacted, that the sums charged by the 38 Geo. 3, c. 5, in respect of the manors, lands, tenements and hereditaments, in the said act mentioned, should be raised for ever. The act incorporating the Vauxhall Bridge Company authorized them to take tolls, and enacted, that the shares of the proprietors should be personal estate, and not in the nature of real property: Held, that the company were liable, under the 38 Geo. 3, c. 60, to be rated to the land tax in respect of their tolls, as being a tenement and hereditament within the true meaning of that act. *Vauxhall Bridge Company v. Sawyer*, 6 Exch. 504.

BANKRUPT.—*Consolidation Act, 1849—12 & 13 Vict. c. 106, ss. 224, 228, 230.*—A composition deed, executed by six-sevenths in number and value of the creditors of a trader whose debts amount to 10*l.* and upwards, whereby, in consideration of a composition to be paid upon the full amount of their debts, they agree to release the trader, is binding upon the rest of the creditors (not parties to it) as a deed of arrangement under the 12 & 13 Vict. c. 106, s. 224. A deed of arrangement may be within the clauses of that act respecting arrangement by deed, although it does not provide for the distribution of the whole estate of the trader. *Tetley v. Taylor*, 21 Law J. (N. S.) Q. B. 2.

CARRIER.—1. *Liability for damage to goods—No implied stipulation.*—The plaintiff, who had some cattle conveyed by a railway company, received for them a ticket, which he signed, containing the terms on which the railway company carried the cattle. At the foot of the ticket there was a clause—"N.B. This ticket is issued subject to the owner undertaking all risks of conveyance whatever, as the company will not be liable for any injury or damage howsoever caused and occurring to live stock of any description travelling upon the L. and Y. Railway, or in their vehicles." The plaintiff saw the cattle put into the truck. During the journey some of the cattle got alarmed, and broke out of the truck and were injured. The truck was so defectively constructed as to be unfit and unsafe for the conveyance of cattle: Held, that there was no implied stipulation that the truck should be fit for the conveyance of cattle, and that the company were protected by the terms of the ticket from liability to the plaintiff for the damage to the cattle.—*Chippendale v. The Lancashire and Yorkshire Railway Company*, 21 Law J. (N. S.) Q. B. 22.

2. *Liability of.*—*Property of servant, passenger with master—Pleading.*—A servant, travelling with his master on a railway, may have an action in his own name against the railway company for the loss of his luggage, although the master took and paid for his ticket. The liability of the railway company in such a case is independent of the contract. A declaration stated that the defendant received the plaintiff and his luggage to be carried "for reward to the defendants in that behalf;" and it was proved that the plaintiff's master paid his fare and took the ticket: Held, that it was immaterial by whom the reward was to be paid, and that the allegation in the declaration was proved. *Semble*, that if the allegation as to reward meant that it was to be paid by the plaintiff, and if that allegation had been material, the payment for and on behalf of the plaintiff by his master would have been a payment by him. *Marshall v. York, Newcastle and Berwick Railway Company*, 21 Law J. (N. S.) C. P. 34.

COMPANY.—*Contract—7 & 8 Vict. c. 110, s. 23—Provisional and complete registration.*—An action for work and labour does not lie against a company completely registered for work done for the company provisionally registered. A company completely registered is not liable on any contract made by the promoters before provisional

registration. *Quære*, whether a company is liable, after complete registration, to be sued in its collective name upon contracts previously made by the provisionally registered company, when such contracts are within section 23 of the 7 & 8 Vict. c. 110. *Hutchinson v. Surrey Consumers Gas-light and Coke Association*, 21 Law J. (N. S.) C. B. 1.

COPYRIGHT IN THIS COUNTRY CLAIMED BY FOREIGNER RESIDENT ABROAD.—*Document*.—A foreigner, though resident abroad, may have copyright in this country if the first publication is in this country. On the trial for an action for piracy of musical copyright, a piece of music having been shown to a witness skilled in music, he was asked, for the purpose of proving that it was not first published in England, whether he had not seen printed copies of it for sale in a shop at Milan at a given date, sixteen years before the trial: Held, that the question was irregular, as referring to the contents of a document not produced or accounted for. Held also, that a statement by the same witness, that he had heard the music produced in court sung by persons in private society, with printed music before them, as if singing therefrom, was not evidence that the music so printed was the same as the music in court. *Boosey v. Davidson*, 13 Q. B. 257.

CORPORATION.—*College—Statutes—Construction of—Right of voting for corporate officer—Charter*.—King James I., by a charter in 1619, granted to E. A. licence to found a college, which should consist of one master, one warden, four fellows, six poor brethren, six poor sisters and twelve poor scholars, to be maintained, &c. according to such ordinances, &c. as should be made by the said E. A., with power to the said E. A. to make ordinances, &c. for the maintenance, rule, government, &c. of the said master, warden, &c. which should be a body corporate; E. A. by deed in 1619 created the college, to consist of the several persons named in the charter, and by an indenture dated in 1620, he endowed the college with lands in three parishes. By an instrument made in 1626, E. A., by virtue of the power given to him by the charter, made certain ordinances, &c. for the government of the said college. These ordinances provided that the churchwardens of the three parishes where the college lands were situate should be assistants to the master, warden and fellows of the said college in the governing thereof, and gave them power to elect the poor brethren, sisters or scholars from the parishes to which they respectively belong. They also provided that if the place of warden should be void, "the master, assistants and fellows" should go into chapel and "proceed to the election of a new warden," and that after the senior fellow had read the statutes relating to the person to be elected, "the electors should make the said election indifferently," &c. If both the places of master and warden should be void at one time, notice was to be given by the senior fellow to the assistants to repair to the college within three days "to join with the fellows in the election of a new master, which should be in all points as he formerly described in the election of a warden." The assist-

ants had always, from the foundation of the college, been accustomed to vote at the elections of wardens. Held, first, that by these ordinances, coupled with the invariable usage, the assistants had a voice in the election of a warden; and, secondly, that E. A., although he could not alter the constitution of the college, had power to give the assistants, who were not members of the corporation, a right of voting for a corporate officer; and, thirdly, that the lapse of time after the foundation of the college did not take away his right to make such an ordinance. *Reg. v. The Master, Fellows and Assistants of the College of God's Gift in Dulwich*, 21 Law J. (N. S.) Q. B. 36.

COSTS.—*County Courts Act.*—The Court will not review the discretion of a judge in refusing or granting a certificate for costs under the County Courts Act, 13 & 14 Vict. c. 61, s. 13. *Palmer v. Richards*, 6 Exch. 335.

COUNTY COURT.—1. *Appeal*—*Appellant bound to pay costs in any event*—*Jurisdiction of Court of Appeal.*—The defendant, against whom judgment had been recovered in a County Court on the 17th of January, gave the plaintiff notice of appeal on the 22nd of January, and the next day entered into a bond with a surety conditioned to pay the costs of the appeal whatever the event might be, and the amount of the judgment in case the appeal were dismissed. On the following day the defendant withdrew the notice of appeal, and gave the plaintiff another notice of appeal, which included additional grounds of appeal. It was objected that as the first notice had been withdrawn, the bond was no security for the costs of the second appeal on the amount of the judgment, and that consequently the court had no jurisdiction to entertain the appeal. The court held, that they had jurisdiction to hear the appeal, and, after argument, directed judgment to be entered for the appellant with costs, notwithstanding the terms of the bond by which the appellant had bound himself to pay the costs of the appeal whatever the event might be. *Daniels v. Charsley*, 21 Law J. (N. S.) C. P. 38.

2. *Certiorari.*—In order to prevent the removal of a plaint from the County Court by certiorari, on the ground of want of jurisdiction in the superior court to entertain the action after removal, the plaint ought to be framed so as to disclose a cause of action over which the superior court has no jurisdiction. Where a plaint was removed from the County Court by certiorari, on the affidavit of the defendant's attorney that difficult questions of law would arise, the court refused to quash the certiorari, though the affidavit of the plaintiff's attorney averred that no such difficult questions of law would arise. *Rees v. Williams*, 21 Law J. (N. S.) Exch. 24.

3. *Discretion of judge*—*Order for costs*—9 & 10 Vict. c. 95, s. 12—13 & 14 Vict. c. 61, s. 13.—In all cases where the superior courts have a concurrent jurisdiction with the County Courts under 128th section of the 9 & 10 Vict. c. 95, or where no plaint could have been entered in any County Court, or where the cause is removed from the County Court by certiorari, the court or a judge is bound, by the 13

and 14 Vict. c. 61, s. 13, on being satisfied that the case falls within the 128th section, to make an order that the plaintiff, who has recovered less than 20*l.* in a superior court, shall recover his costs. *Asplin v. Blackman*, 21 Law J. (N. S.) Exch. 78.

COVENANT.—A., upon the marriage of B., his daughter, covenanted with her husband C., his executors, &c., by deed or will to give, leave and bequeath unto B. one full equal eighth part or share (that being an equal share with his other children) of all the real and personal estate of which he should die seised or possessed. B. died in the lifetime of A. A. having in his lifetime made some disposition of property in favour of a son, by will devised and bequeathed his real and personal estate for the benefit of his widow and some of his surviving daughters: Held, that C. had not any cause of action against the executors of A. *Jones v. How*, 9 C. B. 1.

DEMISE BY INDENTURE.—*Trustees—Survivorship.*—J. W. and the plaintiff, being trustees under the will of W. W., in 1847 demised a house to the defendant by indenture for four years ending at Michaelmas, 1851. J. W. died in January, 1848. An action for use and occupation having been brought by the plaintiff for rent accrued subsequently to January, 1848: Held, that the plaintiff was entitled to maintain the action, and was not bound to sue as surviving trustee. *Wheatley (Bart.) v. Boyd*, 21 Law J. (N. S.) Exch. 39.

DISTRESS.—*When wrongful.*—A landlord, in order to distress, may open the outer door in the ordinary way in which other persons using the building are accustomed to open it. Therefore, where the door of a stable was kept closed by a padlock attached to a moveable staple, and the owner and other persons usually opened the door by pulling out the staple: Held, that a distress made upon goods in the stable, after an entry in this mode, was legal. *Quere*, whether a distress is void where the outer door is improperly broken. *Ryan v. Shilcock*, 21 Law J. (N. S.) Exch. 55.

ERROR BY ADMINISTRATOR OF SUPPLIANT IN A PETITION OF RIGHT.—The administrator of the suppliant in a petition of right may bring error on a judgment given against his testator. Error on a judgment for the crown in a petition of right may be brought in the Exchequer Chamber, the crown being bound in this respect by stat. 11 Geo. 4 & 1 Will. 4, c. 70, s. 8. *De Bode (Baron) v. Reg.* 13 Q. B. 364.

EVIDENCE.—1. *Entry against interest, effect of.*—In support of the right of the Earl of L. to a fishery in the Solway Frith, the defendants put in evidence the following entry in the book of a former receiver of rents of the Earl of L.'s estate:—Received of T. H. the respective shares due from three proprietors (T. H. being one) of the raise-net set in Solway Frith, in D., in the year 1733. Dictum, the entry is evidence not only of rent having been paid by T. H., but also by the two other proprietors. Per Pollock, C.B.—If an entry is admissible as being against the interest of the party making it, it carries with it the whole statement. But if the entry

is made merely in the course of a man's duty, it does not go beyond those matters which it was his duty to answer. *Percival v. Manson*, 21 Law J. (N.S.) Exch. 1.

2. *Inspection of documents—Statute.*—The statute 14 & 15 Vict. c. 99, s. 6, does not enable a party to an action to search generally his opponent's books and papers, with a view of detecting a flaw in his opponent's case, but entitles him to inspect those documents, and those only, in his opponent's possession, which are relevant to the case on which the applicant relies. The applicant cannot, by alleging that his opponent is in possession of documents material to the issues to be maintained by the former, compel the latter to make affidavits in answer, to discover whether he has any such document in his possession, and to specify what they are. *Galsworthy v. Norman*, 21 Law J. (N.S.) Q. B. 70.

3. *Parolevidence of sale—Document.*—M. owed S. a sum of money for which S. had M.'s promissory note as a security. S. applied for payment. M. proposed that an inventory should be made of the goods on his premises, and that S. should take them at a valuation in discharge of the debt. S. consulted his attorney, who prepared a document. After the preparation of the document, M. delivered the inventory to S., and S. and M. insured the goods against fire in their joint names, and S. gave up to M. the promissory note, which was destroyed. S. at the same time credited M. in his book to the amount of the debt. S. took possession of a few articles included in the inventory, for which M. had no use, but M. remained in possession of the rest of the goods as before. The goods in question being seized by the sheriff in execution at the suit of a third party against M., S. claimed them as his own, and sued the sheriff in the County Court for taking them, and in order to maintain his claim offered the document in evidence. This was objected to, and rejected for want of a stamp: Held, that as M. was in possession of the goods, it lay on S. to prove clearly that they were his; and that as the document which contained the terms of the arrangement between M. and S. was inadmissible for want of a stamp, no other evidence of a sale was admissible, and that consequently the facts above stated were no evidence for the jury of S.'s title to the goods: *Semble*, that on appeal from a County Court, the court will not entertain an objection at a ground of appeal which has not been taken in the court below. *Yorke v. Smith*, 21 Law J. (N.S.) Q. B. 53.

FORM OF JUDGMENT IN DETINUE. — *Detinue of goods.*—Judgment (by default) that plaintiff recover the goods, or, if defendant should not render the same, the value thereof, and also plaintiff's damages by reason of the detention. Writ of inquiry to ascertain the damages and costs, but making no mention of the value. Return, damages 40*l.*, costs 40*s.* Judgment, that plaintiff recover the goods, or, if defendant should not render them, the value thereof, and also that he recover his damages, costs, and charges aforesaid, and 27*l.* costs of increase: Award of *distringas*, &c., so that defendant render to the plaintiff the goods. Error thereon: Held, that the

judgment was final, and the writ of error could not be quashed. That the judgment was erroneous for not ascertaining the value, or giving any means of ascertaining it. That the defect could not be supplied in the court of error against the plaintiff in error in favour of the defendant in error. And that the defendant in error might have entered a remittitur as to the delivery of the goods or their value, before final judgment in the court below; but that in the court of error the judgment could not be so divided, and must be entirely reversed. *Phillips (Sir Thomas, Knight,) v. Jones*, 15 Q. B. 859.

HIGHWAYS. — *Surveyors of—Incoming and outgoing surveyor—Illegality—Public policy.*—The defendant, as surveyor of the highways, had incurred large legal expenses in defending certain appeals against orders for stopping up highways without the previous sanction of the parish. At a meeting of the vestry, where his accounts were gone into, the items for these expenses were objected to, and opposition was threatened to be made to his accounts before the justices. The defendant ultimately offered to pay 50*l.* in discharge of the attorney's bill for costs, if no opposition were offered to the passing of his accounts before the magistrates. The vestry accepted the offer, and the plaintiff and other vestrymen signed a minute to the above effect. They also entered and signed a minute at the foot of the defendant's account, that the 50*l.* was to be paid to his successor in office, who happened to be the plaintiff. The accounts were passed without opposition, but the defendant did not pay the 50*l.* The plaintiff consequently sued him for it in the County Court: Held, that there was no evidence of a contract with the plaintiff alone to entitle him to maintain an action alone for the 50*l.*; that if the 50*l.* was to be treated as part of the balance of the public money in the hands of the outgoing surveyor, the method of recovering it was not by action, but by summary application under the statute 5 & 6 Will. 4, c. 50, s. 103. *Semble*, that the arrangement with the vestry was illegal, as contrary to public policy. *Kilham v. Collier*, 21 Law J. (N. S.) Q. B. 65.

INDEBITATUS COUNT IN DEBT.—*On sale of debts owing to plaintiff.*—*Stat. 3 & 4 Will. 4, c. 42, s. 23.*—A count in debt stated that defendant was indebted to plaintiff in 100*l.* "for the price or value of certain debts then due from divers other persons to the plaintiff, and then sold and transferred by the plaintiff to the defendant:" Held, on motion in arrest of judgment, that the count was not bad for want of more special averments: for that although the sale of debts would not enable the transferee to sue upon them in his own name, yet, as the permission to sue in the name of the transferor might be the subject of an agreement which would create a debt, such debt might be properly sued for on a common indebitatus count. A count in detinue stated that plaintiff delivered to defendant a certain bill of exchange [of the plaintiff, to wit, a bill of exchange, bearing date, to wit, the 20th day of November, A.D. 1848, drawn by the plaintiff upon and accepted by the defendant,] for [the payment to the plaintiff or his order of a certain sum, to wit,] 85*l.*

[two months after the date thereof,] of great value, to wit, of the value of 100*l.* to be redelivered by defendant to plaintiff on request. Breach, that defendant did not redeliver the bill, but detained. Plaintiff, on the trial, proved that a bill of exchange for 85*l.* was in the defendant's hands, but did not prove the particular description as laid. The judge, on objection, amended, first, by striking out the words "two months after the date thereof," and then, on further objection, all the words within brackets: Held, that the count so amended, was not specially demurrable for want of certainty; and that the amendment was warranted by stat. 3 & 4 Will. 4, c. 42, s. 23. *Graham v. Gracie*, 13 Q. B. 548.

INSOLVENT ACT.—1 & 2 Vict. c. 110—*Discharge out of custody—Revesting of property in insolvent—Pleading.*—Declaration against the defendant as maker of a promissory note payable to F. J. and by him indorsed to the plaintiff. Plea, that after the making of the note, and before the indorsement to the plaintiff, the said F. J., then being a prisoner for debt in Lancaster Castle gaol, duly petitioned the court for the relief of insolvent debtors, under the 1 & 2 Vict. c. 110, for his discharge from custody, and that thereupon an order was made by the said court pursuant to the said statute for the vesting of F. J.'s estate and effects in the provisional assignee, by virtue of which order and the said statute the second promissory note and all right of action in respect thereof became vested in the said provisional assignee, &c. Replication, that, before the indorsement, the said F. J. was discharged from custody by the detaining creditor in the plea mentioned, and with his consent, and without any adjudication by the said court for the relief of insolvent debtors having been made in that behalf: Held, upon demurrer, that, under the 1 & 2 Vict. c. 110, the discharge out of custody of an insolvent with the consent of his detaining creditor, without any adjudication in that behalf, had the effect of putting a stop to the operation of the vesting order, and of divesting the insolvent's estate out of the assignee, and revesting it in the insolvent himself, and, therefore, that the replication was good. *Grange v. Trickett*, 21 Law J. (N. S.) Q. B. 27.

INSPECTION OF DOCUMENTS.—14 & 15 Vict. c. 99—*Issue joined.*—Where an application is made for inspection of documents under the 14 & 15 Vict. c. 99, s. 6, a place for the inspection should be named. Issue need not be joined before the order is applied for. *Rogers v. Turner*, 21 Law J. (N. S.) Exch. 8

INSURANCE ON CORN "FREE OF AVERAGE."—A cargo of corn was insured "free from average" on a voyage from Dantzic to Hull by the ship *Isabella*. In the course of the voyage the vessel and cargo sustained damage by the sea, and in consequence the vessel was obliged to put into a port in Norway; and there the corn was taken out for the purpose of drying it, and repairing the vessel, and so enabling her to proceed to England with the corn when dried. The corn, however, when taken out, appeared to have received considerable damage, and the master, after calling in advice,

resolved to sell it; and it was accordingly sold (after having been partially dried) as damaged corn in the port in Norway: Held, that the insured could not recover as for a total loss, unless the corn was in such a state in the port in Norway as that when brought home it could not have been sold for an amount exceeding the expense of drying and bringing it home; and that it was not a proper question to leave to the jury, whether a prudent uninsured owner would under similar circumstances have sold the corn at the port in Norway. *Reimer v. Ringrose*, 6 Exch. 263.

LANDLORD AND TENANT.—1. *Outgoing tenant—Custom of the country.*—It is not an unreasonable custom that a tenant, who is bound to use and cultivate his farm according to the rules of good husbandry and the custom of the country, should be entitled on quitting the farm to charge his landlord with a certain portion of the expense of the necessary drainage of the farm, done without his landlord's consent or knowledge. *Mouseley v. Ludlam*, 21 Law J. (N. S.) Q. B. 64.

2. *Trover—Fixtures.*—The declaration stated that the plaintiff had been tenant to one B., and during his tenancy had put up certain fixtures; that before the expiration of the tenancy B. granted to the plaintiff leave and licence to keep the said fixtures on the premises after the expiration of the tenancy, in order that he might sell them to the incoming tenant, and to enter and remove them if such tenant would not purchase them; that the defendant subsequently became tenant; that he would neither purchase the fixtures, nor allow the plaintiff to enter or remove them. The plaintiff traversed that B. granted such licence to the plaintiff. At the trial the plaintiff gave in evidence the following letter, written to him by B.'s attorney, "Mr. B. has no objection to your leaving the fixtures on the premises, and making the best terms with the incoming tenant:" Held, that this document, if it gave a licence at all, gave one coupled with an interest in land; and that therefore, not being under seal, it could not be enforced against the incoming tenant. Trover will not lie for fixtures which a tenant has left annexed to the freehold after he has quitted possession, with the leave of his landlord, for the purpose of enabling him to make terms as to their purchase by the incoming tenant. *Ruffey v. Henderson*, 21 Law J. (N. S.) Q. B. 49.

LEASE.—1. *Grant—Reservation—Parol leave and licence—Evidence.*—The following stipulation in a lease not under seal, "All the hedges, trees, thorn-bushes, fences, with the lop and top, are reserved to the landlord," is evidence for the landlord under a plea of leave and licence in an action against him by his tenant for entering the close and drawing the trees when cut down over the close. *Hewitt v. Isham*, (*Bart.*), 21 Law J. (N. S.) Exch. 35.

2. *Merger.*—A., the plaintiff, demised to B. certain premises for a term of fifty-five years in consideration of 530*l.*, subject to the payment of yearly rent of 84*l.*, and covenants for repairs, &c.; but the consideration money not being paid, B., &c., subsequently assigned to A., by way of mortgage, the whole of the residue of the term then

unexpired, subject to the rent and covenants, and with a power of sale. Notice of sale having been given by A. pursuant to the power, the plaintiff, in consideration of 500*l.*, by a deed "bargained, sold, assigned, transferred and set over," to the defendant the premises described in the lease, to hold for all the rest, residue and remainder of the said term of fifty-five years, granted by the plaintiff to B. discharged from the mortgage debt, but subject to the payment of the yearly rent of 84*l.*, and to the covenants in the said lease to B., and the defendant covenanted to pay the rent and perform the covenants. The defendant then entered upon the premises: Held, that, although the term of fifty-five years was merged by the mortgage to the lessor, the effect of the conveyance to the defendant was to create a new term of the same duration as the unexpired part of the old term, and that the defendant was liable upon the covenants to pay the rent, and to perform the repairs.—*Cottee v. Richardson*, 21 Law J. (N.S) Exch. 52.

LIBEL.—*What words amount to.*—Judgment was given, that on each of four counts of an information the defendant be imprisoned on the first count "for the space of two months now next ensuing;" on the second count, "for the further space of two months, to be computed from and after the end and expiration of his imprisonment" for the offence mentioned in the first count; on the third count, for the further space of two months, to be computed in like manner from the end of the imprisonment on the second count; and on the fourth count, for the further space of two months, to be computed in like manner from the end of the imprisonment on the third count. The third count was adjudged on error to be insufficient: Held, that the sentence on the fourth count was not thereby invalidated, and that the imprisonment on it was to be computed from the end of the imprisonment on the second count. *Gregory v. Reg.* 15 Q. B. 974.

LIMITATION ACT.—3 & 4 Will. 4, c. 27, s. 8—59 Geo. 3, c. 12, s. 17—*Churchwardens and overseers.*—In 1824, B. was let into possession of a cottage under an agreement, purporting to be a demise by the churchwardens and overseers of the poor of the parish of P., at the rent of 1*s.* 6*d.* per week, B. to quit on one month's notice being given, &c. This agreement was signed by one of the then overseers. The churchwardens did not sign, nor was there any evidence to show that they had assented to the agreement. B. never paid any rent or made any acknowledgment. B. afterwards sold the premises to the defendant: Held, in an action of ejectment, brought after twenty years, by the churchwardens and overseers for the time being, against the defendant, that as the agreement did not pass an interest, it did not amount to a lease in writing within the meaning of the 3 & 4 Will. 4, c. 27, s. 8, and that consequently the claim of the lessor of the plaintiff was barred by twenty years' adverse possession. *Quære*, whether extrinsic evidence would be admissible to show that the agreement was executed by the overseer on behalf of the whole body of churchwardens and overseers. *Doe d. Lansdell v. Gower*, 21 Law J. (N. S.) Q. B. 57.

LIMITATIONS, STATUTE OF.—1. *Payment of interest.*—Payment of interest on a promissory note, payable on demand, is a sufficient acknowledgment to bar the Statute of Limitations, although no previous demand has been made. *Bradfield v. Tupper*, 21 Law J. (N. S.) Exch. 6.

2. *Promissory note—Payment of dividend by insolvent.*—One of three makers of a joint and several promissory note having become insolvent, the name of the plaintiff, as holder, was duly inserted in his schedule, and a dividend was subsequently paid to him by the assignee of the insolvent in respect of the note: Held, that this was not a part payment to take the case out of the Statute of Limitations as against the other makers. *Davies v. Edwards*, 21 Law J. (N. S.) Exch. 4.

LOCAL ACT.—*Construction of—Harbour rates*—“*Package and parcel*,” meaning of.—A local act of parliament empowered certain harbour commissioners to levy, by way of rates, for every ton or less quantity than a ton, and for every package and parcel of goods, wares, merchandise, &c. exported over the bar of the rivers B. and L., a sum not exceeding 1*d.* for every ton or less quantity than a ton, and for every package or parcel of goods, wares, &c. so exported. The trade of the port of L. consisted of the exportation of tin plates, which were packed in wooden cases or boxes for shipment, and usually and on the occasion in question the boxes exported formed part of and composed one entire quantity of shipment in one vessel (and generally under one bill of lading) to the same consignee, and at an uniform rate of freight on all the tin plates so shipped, such freight being paid on the quantity of tons weight: Held, that the commissioners were entitled to charge 1*d.* per box for each box of tin plates, and were not bound to charge 1*d.* per ton weight. *Jones v. Phillips*, 21 Law J. (N. S.) Exch. 6.

MINING COMPANY.—*Power of directors to borrow money.*—The directors of a mining company have no implied authority to borrow money on the credit of the company for the purposes of carrying on the mines, or for any other purpose, however useful or necessary to the objects for which the company is formed. By the deed of settlement under which a company was carried on, a capital of 50,000*l.* was provided, and there were powers to create new shares, and to alter the provisions of the deed, by the vote of a special general meeting. There was also a clause—“That the affairs and business of the company shall be under the sole and entire controul of the directors, of whom there shall not be less than five or more than nine, and three of them shall at all meetings of directors, and for all purposes, be competent to act”: Held, that under this deed the directors had no express authority to borrow money for the necessary purposes of the mines. *Burmester v. Norris*, 21 Law J. (N. S.) Exch. 43.

MORTGAGE.—*Stamp Act*, 55 Geo. 3, c. 184, sched. part 1, “*Mortgage*”—*Policy of insurance.*—A., being indebted to the de-

fendant in 1841. 7s. 6d., mortgaged by deed certain furniture to him, and also assigned a policy of assurance, with a proviso for redemption on payment of the principal money and interest. It was also provided, that on default of payment the defendant should have the power of taking and selling the furniture, and of reimbursing himself thereout for all costs and expenses, and also for all sums expended by him in keeping the policy on foot. Then followed a covenant by A. for repayment to the defendant of 1841. 7s. 6d., and for payment to the insurance office of the premiums: That, in case of avoidance of the policy, or the insolvency of the insurance company, A. would insure in another office, and assign the new policy to the defendant: That, in case of A.'s neglecting to pay the premium, the defendant might pay it to the office, and that the sums advanced by the defendant for continuing the insurance should be considered as principal monies, and bear interest; and that the policy should be security to the defendant for the repayment thereof, and should not be redeemed without payment to the defendant of the sum advanced, and interest, as well as of the 1841. 7s. 6d.: Held, that such mortgage was not a "security for the repayment of money to be thereafter lent, advanced or paid" to an amount "uncertain and without limit," within the Stamp Act, 55 Geo. 3, c. 184 sched. part 1, tit. "Mortgage," and, therefore, that it did not require a stamp of 25l. *Lawrence v. Boston*, 21 Law J. (N. S.) Exch. 49.

MORTGAGEE.—*Tenancy at will.*—A mortgage contained a power of sale, and then a proviso and covenant by the mortgagee that no sale should take place, nor any means of obtaining possession of the premises be taken, until the expiration of twelve calendar months after notice in writing of such intention had been given to the mortgagor. It also contained a covenant by the mortgagee for quiet enjoyment by the mortgagor as tenant at will to the mortgagee, on payment of a yearly rent in lieu of, and as interest upon, the mortgage money. The mortgagor remained in possession of the premises, but no livery of seisin was made to the mortgagor. Prior to the commencement of the action, there was a demand of possession, but no notice to quit was ever given to the mortgagor: Held, that the effect of the deed was to create a tenancy at will only, and that a demand of possession without any notice to quit was sufficient to entitle the mortgagee or his assignee to maintain ejectment. *Doe d. Dixie v. Davies*, 21 Law J. (N. S.) Exch. 60.

MUNICIPAL CORPORATION.—*Burgess list, claim to be inserted on—Signature by initials of Christian name—Mandamus.*—A person, whose name had been omitted by mistake from the list of burgesses of a borough, sent in a claim to be inserted on the burgess list. He signed the claim with the initials of his Christian names, and with his surname in full. He did not attend before the mayor and assessor to support his claim, but the overseer, who had omitted the name by an oversight, stated that the claim was good, and showed to the court of revision the poor-rate book, containing the name of the claimant. There was no other person of the same name in the

borough, and the court of revision were well acquainted with the person and handwriting of the claimant. They, however, rejected the claim on the ground that the signature by initials of the Christian names was insufficient: The court held, that the mayor and assessor had sufficient information as to the meaning of the initials to have warranted them to have inserted the name of the claimant on the burgess list, and granted a mandamus to the mayor, commanding him to insert the name on the burgess roll. *Reg. v. Hartlepool (Mayor of)*, 21 Law J. (N. S.) Q. B. 71.

NEWSPAPER STAMP ACT, 6 & 7 WILL. 4, c. 76.—*Newspaper, definition of, and liability to stamp duty.*—The defendants were the publishers of a paper containing, amongst other things, public news, intelligence, and occurrences, called “The Household Narrative of Current Events.” It was printed for the purpose of being dispersed and made public by sale in the ordinary way, and was published periodically at intervals exceeding twenty-six days between the publication of each number; it did not exceed two sheets of the dimensions specified in the schedule A. to the 6 & 7 Will. 4, c. 76, and was published for sale for a less sum than 6d.: Held, per Pollock, C.B., Platt, B., and Martin, B., on an information against the defendants for penalties and newspaper duties, under the 6 & 7 Will. 4, c. 76, sched. A., that the criterion of a paper being a newspaper liable to stamp duty was the period of its publication; and that no paper was to be deemed a newspaper unless it were published at an interval of or less than twenty-six days. Dissentiente Parke, B., who held that the paper in question was a newspaper, its main or general object being to give to the public information as to recent events. *Attorney-General v. Bradbury*, 21 Law J. (N. S.) Exch. 12.

PARLIAMENT.—1. *Borough vote—Amendment*—6 & 7 Vict. c. 18, ss. 38, 40.—Where the description in the notice of claim given to the overseers, under the section 38 of 6 & 7 Vict. c. 18, of the situation of the premises, in respect of which a borough vote is claimed, is not strictly accurate, but is, in the opinion of the revising barrister, sufficient to give notice for what premises the claim really is, it is his duty not to amend the claim, but to proceed as if the claim had been strictly accurate in its description. *Eaden v. Cooper*, 21 Law J. (N. S.) C. P. 32.

2. *Building—Occupation*—2 Will. 4, c. 45, s. 27.—The premises in respect of which a vote for a borough was claimed under 2 Will. 4, c. 45, s. 27, consisted of a two-stalled stable, built of brick, with another building annexed, but of a lower elevation, and to which also a wooden building was annexed, in three compartments, each of which, as well as the two brick buildings, had an opening into the same yard; but there was no internal communication. All three were occupied together under the same landlord, and used by the claimant for a wheelwright’s business: Held, that this was “a building” within the meaning of the statute. *Pownall v. Dawson*, 21 Law J. (N. S.) C. B. 14.

3. *County vote—Mortgagor in possession—Payments in reduction of mortgage debt*—8 Hen. 6, c. 7—6 & 7 Vict. c. 18, s. 74.—The claimant, a member of a building society, purchased land of the yearly value of 6*l.*, and mortgaged it to the trustees of the society for the amount of the purchase-money which they had advanced to him. He was also a holder of three shares in the society. By the rules of the society he was bound to pay 1*s.* 6*d.* weekly for each share (1*l.* 14*s.* per annum). And by the mortgage, which was in accordance with the rules of the society, power was reserved to the trustees, on neglect or refusal to observe any of the regulations, &c. to sell the premises, &c., and receive the rents. By the mortgage a sum equal to 5*l.* per cent. as premium for prior advances was to be and was secured; and the sum fixed to be paid for incidental expenses was 6*s.* per annum, which was also secured. Of the 1*l.* 14*s.* per annum, 2*l.* 16*s.* was appropriated to the payment of interest on the money still due upon the mortgage, and for incidental expenses, and the remainder was taken in part discharge of the mortgage debt, and a receipt given from time to time: Held, that the whole 1*l.* 14*s.* must be deducted from the annual value of the estate, and, therefore, that the claimant had not an estate of the value of forty shillings by the year, within the meaning of the 8 Hen. 6, c. 7, and the 6 & 7 Vict. c. 18, s. 74, and was not entitled to a vote for a knight of the shire. *Beamish v. Stoke (Overseers of)*, 21 Law J. (N. S.) C. B. 9.

4. *Vote of person employed in collecting customs*—22 Geo. 3, c. 41, s. 1.—Where no counsel appears for the respondent, the counsel for the appellant will be heard, upon proving service of the notice of appeal. By the 22 Geo. 3, c. 41, s. 1, "No commissioner, &c., or other officer or person whatsoever concerned or employed in the charging, collecting, levying, or managing the customs, or any branch thereof," is to have a vote. "An extra-glut tide-waiter" is a person whose name is on a list confirmed by the Commissioners of Customs of persons ready to act as occasional tide-waiters in boarding vessels for the purpose of watching the cargoes to be examined by the proper officer of the customs, and liable to be called on to act whenever there may be occasion. He is paid by the job, and makes the declaration required by 8 & 9 Vict. c. 85, s. 10, once for all on his appointment, which declaration is made by all the officers of the customs: Held, that such a person is "an officer or person employed in the collecting the customs," and is not entitled to a vote. *Pownall v. Hood*, 21 Law J. (N. S.) C. B. 12.

PATENT.—*Disclaimer entered by grantee*.—In an action by the assignee of a patent for its infringement, the declaration alleged that, after the assignment, the grantee of the patent, pursuant to the statute (5 & 6 Will 4, c. 83), entered with the clerk of the patents a disclaimer of part of the title of the invention. Plea, that before the making of the disclaimer, the grantee assigned the patent to the plaintiff, and at the time of making the disclaimer was not a person who could lawfully enter such disclaimer, without this, that, pursuant to the statute he entered the disclaimer modo et formâ: Held,

that under this traverse the only issue raised was, whether in point of fact a disclaimer was entered by the grantee. *Wallington v. Dale*, 6 Exch. 284.

PLEADING.—1. Arrest of judgment—Action for maliciously bringing action in name of insolvent.—No action lies for commencing and prosecuting an action maliciously, and without reasonable or probable cause, in the name of a third party, without an allegation showing that legal damage has been sustained. Per Williams, J.—With such allegation the action lies. The declaration after stating that the defendant in the name of a third party, whom he knew to be insolvent, maliciously and without reasonable or probable cause, commenced and prosecuted an action against the plaintiff, in which the then plaintiff was nonsuited, proceeded as follows:—"And it was considered by the said court that the said L. H. D. should take nothing by his said writ, but that he and his pledges to prosecute should be in mercy, &c., whereupon and whereby the said suit was wholly determined. By means of which premises the plaintiff was put to costs in defending the action, which costs he was unable to obtain from the said L. H. D., who was and is unable to pay the same, and was otherwise vexed and injured, &c.:" Held, insufficient in arrest of judgment (the plaintiff's counsel admitting that the non-payment of extra costs would not be the subject of legal damage so as to maintain the action), inasmuch as it was consistent with the declaration that no ordinary costs were awarded to the plaintiff on the nonsuit, owing to his own neglect to apply for them, and that this was the only reason of his failing to obtain them. *Cotterell v. Jones*, 21 Law J. (N.S.) C. B. 2.

2. Dispensation, averment of.—The declaration stated that it was agreed between A. (the plaintiff) and B. (the defendant) that A., B. and C. should, at the expiration of a reasonable time, execute an indenture binding C. as an apprentice to A., and that B. should pay to A. a premium of 60*l.*, 5*l.* on the execution of the indenture, and the residue by certain bills, to be drawn by the plaintiff and accepted by the defendant; averment, that although a reasonable time for B. and C. to execute the indenture, and for B. to pay 5*l.* and to accept the bills, had elapsed, and although A. had always been ready and willing to execute such indenture, and to receive C. as such apprentice, and although A., at the expiration of such reasonable time, requested B. to execute such indenture and to pay the 5*l.*, and accept and deliver to him the said bills, yet B. did not nor would execute the indenture or pay the 5*l.*, or accept and deliver to A. the said bills, but wholly refused so to do, and then wholly exonerated and discharged A. from tendering such indenture for execution and such bills for acceptance, &c. Plea, that B. did not exonerate and discharge A. from tendering the indenture to him for execution or the bills for acceptance. The issue having been found for the defendant: Held, upon motion for judgment non obstante veredicto, that the declaration would have been clearly bad without the averment of dispensation; and therefore that the issue taken thereon was not an immaterial one, though

by reason of the want of an averment that B. had notice of A.'s readiness and willingness to execute the indenture, the declaration would be insufficient to support a judgment for the plaintiff. A replender can only be awarded where the court cannot upon the matter alleged upon, and established by the record, see which way the judgment ought to be given; and it is never awarded in favour of the party who makes the first default. *Doogood v. Rose*, 9 C. B. 132.

POOR RATE.—*Pump-room commissioners rateable.*—To exempt property from poor rate as being devoted to public purposes, it is not sufficient that it produces no benefit to the occupiers individually, and that the occupation is in some degree beneficial to the whole public, yielding additional benefit also to a limited district or community, the benefit must be exclusively public. An act, 4 & 5 Vict. c. xvi., "for improving certain parts of High and Low Harrogate," and for protecting the mineral springs there, &c., recited, that many visitors resorted to those places, and that "it would be of great advantage to the inhabitants, and to the public at large," if provisions were made as after mentioned. By subsequent clauses, commissioners were appointed for carrying the act into effect within defined boundaries, comprehending parts only of several townships. The mineral springs were vested in the commissioners, for the purpose of regulation and protection; and they were empowered to extend and alter the buildings over the springs, to lock up the springs, giving the public free access between certain hours; to build a pump room, and to make a limited charge on persons frequenting the said room and buildings; to flag and repair footways in all streets within the limits; to make and repair sewers under the streets; to widen and improve, light, and cleanse them; to regulate the buildings therein, and to abate nuisances; and they were authorized to cause the dirt, ashes and rubbish, except such as occupiers should reserve for their own use, to be removed from any house within the limits, at such time and manner as they, the commissioners, should appoint. They were further empowered to erect a market for the sale of provisions, to set up weighing machines, license and regulate hackney coaches, appoint constables, &c. And they were enabled for the purposes of the act to lay rates on the occupiers of lands, houses, &c., within their district. The commissioners carried these provisions into effect, and built a pump room, which yielded them a profit, the whole of which was applied to the purposes specified in the act, and to no others: Held, that the commissioners were rateable to the poor rate of the township in which the pump room was situate, as beneficial occupiers of the room, the profits not being exclusively appropriated by the act to public purposes. *Reg. v. Harrogate*, 15 Q. B. 1012.

PRACTICE.—*Motion in arrest of judgment—Demurrer undetermined—Rule Hil. T. 2 Will. 4, c. 65.*—Some issues of fact had been found for the plaintiff, and some for the defendant, in vacation. Issues in law still remained undetermined at the commencement of the next term. It being admitted that no motion in arrest of judgment or for judgment non obstante veredicto could be made until

the demurrers were determined: *Semble*, that no such motion could be made under the circumstances, after the first four days of term, except by consent. *Harris v. Great Northern Railway Company*, 21 L. J. (N. S.) C. B. 16.

PROHIBITION.—*Insolvency*—5 & 6 Vict. c. 116—*Protection from process*—*Debts less than 300l.*—A. petitioned the County Court for protection from process, under 5 & 6 Vict. c. 116, as a trader owing debts amounting in the whole to less than 300l. It appeared that he had previously presented a similar petition, and obtained a final order for protection, and that the debts specified in the schedule to the former petition were still unpaid. The whole amount of the debts stated in both schedules exceeded 300l. The judge decided that he was entitled to protection as a trader owing debts amounting in the whole to less than 300l. *In re Bowen*, 21 Law J. (N. S.) Q. B. 10.

PROMISSORY NOTE.—*Delivery after death of maker.*—A. at his death, left among his papers two letters sealed and directed to the plaintiff, (who had been his housekeeper for some years, but had left his service after giving birth to a child, of which he was the father,) containing two promissory notes for 400l. and 200l. respectively. In one letter the note was said to be “in consideration of the long and faithful services of the plaintiff,” in the other he had written “in addition to any sum I owe you, I inclose 200l. as a mark of my respect.” The defendants, who were the executors of A., paid 200l. after his death on account of these notes to the plaintiff, and promised, in writing, to pay the residue, but subsequently declined to do so, and the plaintiff brought an action of assumpsit against them, in which were counts upon the notes, and a count upon an account stated with the defendants as executors: Held, that the testator’s estate was not liable in respect of the notes, as they had not been delivered by him to the plaintiff, and could not operate as testamentary dispositions, because not in conformity with the 1 & 2 Vict. c. 26 (the Wills Act); and held, also, that the defendants were not liable upon the count in an account stated, because the payments and promise had been made under a mistake as to the liability of the testator’s estate, and without consideration. *Gough v. Tinden*, 21 Law J. (N. S.) Exch. 58.

PUBLIC NUISANCE.—*Negligence—Liability.*—The defendants were employed to pave a district by A. They contracted with B. to pave one of the streets. B.’s workmen, in the course of paving the street, left some stones at night in such a condition as to constitute a public nuisance, and the plaintiff was injured by falling over these stones. No personal interference of the defendants with, or sanction of, the work of laying down the stones was proved: Held, that the defendants were not liable. *Overton v. Freeman*, 21 Law J. (N. S.) C. B. 52.

RAILWAY COMPANY.—*Agreement for tolls—Rate of charge.*—By an agreement made between the company of proprietors

of the Manchester, Bolton, and Bury Canal Company, and the Bury and Rossendale Railway Company, it was agreed, first, that they would mutually concur in the expense of the Bury and Rossendale Company in obtaining an act of parliament in the ensuing session for a line of railway from the Manchester and Bolton Railway to Bury and Rawtenstall; secondly, that the Bury and Rossendale Railway Company should have the use of the Manchester and Bolton Company's station at Salford, but not to impede the Manchester and Bolton Company's traffic, paying such charge for such requisite additional accommodation to the same arising from the traffic of the Bury and Rossendale Company as any three indifferent persons, to whom it should be referred in the usual way, should determine; thirdly, that the traffic of the Manchester, Bury and Rossendale Company, whether of passengers, merchandize, or coal, that is, traffic using both lines, or any portions thereof, between Salford and Rawtenstall, or any points intermediate to them, should be carried on as respects engine power and carriages, and clerks, porters and other expenses, (except the maintenance of the Manchester and Bolton Railway), at the cost and charge of the Bury and Rossendale Railway Company, who should pay to the Manchester and Bolton Railway Company for the use of their railway, and in respect to the traffic therein specified, a pro rata proportion, according to the distances passed over the two lines respectively, of all and singular the gross rates, tolls and proceeds, arising from the said traffic, with no other deduction from the same but that thereafter mentioned; and with this proviso, that nothing therein contained, nor elsewhere provided, should authorize the Manchester and Bolton Railway Company to receive for the use of their railway, between the point of junction of it with the Bury and Rossendale Railway and Salford, for a greater distance than half the length between such point of junction and the terminus of the Manchester and Bolton Railway in Salford, nevertheless, the Manchester and Bolton Railway Company should be entitled to charge for the use of such portion of their railway for the length of two miles at least; fourthly, that previous to such apportionment of the gross rates, tolls and proceeds, referred to in clause three, the Bury and Rossendale Company should be entitled to deduct so much of the passenger duty as should be paid by them, and afterwards further to deduct from the proceeds of all such of the said traffic as shall have been conveyed in their carriages, &c., and by power provided at their expense, the further sum of 12½. per cent. and no more, from the proceeds arising from passenger traffic, including gentlemen's carriages, horses, and parcels, and 30l. per cent. and no more from the proceeds arising from merchandize and coal traffic, including stone. After the making of this agreement, the Manchester, Bolton and Bury Canal Navigation Company was incorporated with the Manchester and Leeds Railway and became the Lancashire and Yorkshire Railway Company; and the Bury and Rossendale Company became the Manchester, Bury and Rossendale Company, and having been extended to certain places, received

the name of "The East Lancashire Railway Company," and by divers subsequent enactments, certain other railways were incorporated with it, so as to form an extensive line of railway. A special verdict having found, among other facts, that the space between the point of junction and the Salford station was of the length of four miles, and no more: Held, on the above agreement, first, that the plaintiffs were entitled to charge for those four miles, not that proportion for the whole amount received as tolls, which the whole distance, viz. two miles, to be charged for on this part, bore to the whole distance traversed on the defendant's line, but in the proportion that two miles bore to the whole distance traversed over the plaintiff's and defendant's railways: secondly, that the agreement had not been affected by the subsequent acts of parliament; and that it could not be held to extend beyond the traffic on the Bury and Rossendale Railway. *Lancashire and Yorkshire Railway Company v. East Lancashire Railway Company*, 21 Law J. (N. S.) Exch. 62.

RAILWAY.—Corporation—Covenant—Public act.—A railway company incorporated by act of parliament, is bound to apply all the funds of the company for the purposes directed and provided for by the act, and for no other purpose whatever. A railway company was incorporated by a public act of parliament "for the purpose of making and maintaining" a particular railway, and other works by the act authorized, "and for other purposes therein declared." They were empowered by the act to raise money for making and maintaining the railway, and other works authorized by the act, and the money so raised was directed to be expended towards those purposes, and otherwise carrying the act into execution, and after paying these expenses the profits of the company were to be divided among the proprietors. The purposes mentioned in the act were confined to the acts to be done upon and relating to the railway to be made to the company. The defendants, the company so incorporated, covenanted with the plaintiffs, another railway company, to take a lease of their railways, and to pay the costs of soliciting bills then pending in parliament, by which the plaintiffs were to be authorized to make extensions and branches of their railways. In an action for breach of covenant, in not paying the costs of the bills in parliament: Held, that the act incorporating the defendants being a public act, must be presumed to be known to the plaintiffs, and that they could not recover, inasmuch as the covenant entered into by the defendants was beyond the scope of their authority as a corporation, and was, therefore, illegal and void, however beneficial to the defendants' railways the objects of the covenant, if carried out, might be. *East Anglian Railway Company v. Eastern Counties Railway Company*, 21 Law J. (N. S.) C. P. 23.

RULE.—Affidavits—What question may be raised on showing cause against motion for attachment for non-performance of award.—In showing cause against a rule for attachment for non-performance of an award, affidavits cannot be cited to show that the award

is impracticable, uncertain or not final, nor can the award be impeached except for defects apparent on the face of it. The rule, that an application once disposed of cannot be renewed under the same circumstances, and for the same object, is not binding in all cases. Where an award directed that A. should pay the arbitrator's costs, and should be reimbursed by B., a rule for an attachment against B. for not reimbursing A. was discharged, because the affidavits did not show that A. had paid them to the arbitrator. A. had not then paid them, but had given his note for the amount, which he afterwards paid. On a second motion then made, an attachment was granted, on the ground that the payment by A. was a new fact, which took the case out of the ordinary rule, it appearing also that there had been contumacy in the party against whom the rule was directed, and hardship on the applicant. *In re Butler*, 13 Q. B. 341.

STAMP.—Covenant.—By a deed of the 27th of May, 1849, and made between the Duke of B. of the first part; the Marquis of C., his son, of the second part; and A. G. R. of the third part; after reciting that the duke was entitled to certain estates for his life, with remainder to the Marquis of C., and that he was also entitled to certain other real and personal property, and that the real and personal property was subject to incumbrances amounting to 1,027,282*l.*, the marquis covenanted with the duke to concur in raising, by a mortgage on the property, the sum of 1,100,000*l.*, to be applied in payment of the incumbrances, which, together with the said last-mentioned sum, or so much thereof as should be raised, whether the marquis had then entered or should thereafter enter into any covenant for payment thereof, should be considered as the debt of the duke, which he was bound to pay in exoneration of the marquis, and that the whole of the said incumbrances, and so much of the said sum of 1,100,000*l.* as should be raised, till the aggregate amount should be reduced to 500,000*l.*, should be considered as the duke's debt, and that after such reduction the remainder of the said incumbrances, and so much of the said 1,100,000*l.* as should be raised, should be considered as primarily chargeable upon such of the estates as were then or should be thereafter charged therewith in exoneration of the said debt. That the marquis had concurred with the duke in raising by mortgaging, &c., the said estates, and on their personal security, to the amount of 467,115*l.* 10*s.*, which was so raised as a part of the said sum of 1,100,000*l.* with the intention, on the part of the marquis, that the same should be applied towards the discharge of the said incumbrances. That it was considered by the marquis, that, as between himself and the duke, the latter was primarily liable for the payment of the whole of the said debts, constituting the aggregate sum of 1,464,959*l.* 11*s.* 11*d.*, and that, under the circumstances, the duke had applied to the marquis to concur with him in raising monies greatly exceeding the sum of 1,100,000*l.* agreed to be raised; to which request the marquis had declined to accede, but that the marquis had proposed to the duke, that the marquis should take to and absolutely purchase from the duke all the equity of redemption, estate,

title, &c. to the real and personal property comprised in certain schedules to the deed, to which proposal the duke had acceded. That the duke granted to A. G. R. all the lands, to hold the same subject to the charges, in trust for the marquis, and that the real and personal property should be the primary fund for satisfying the debts and liabilities. There was also a covenant by the marquis, that he would apply all the monies that should come into his hands in respect of the said estates, chattels, &c., towards the relief and indemnification of the duke. This deed having been stamped with the duty of 1l. 15s., and nine progressive stamps of 1l. 5s. each, and the opinion of the commissioners of Inland Revenue having been desired on the question, under the 13 & 14 Vict. c. 97, they considered that the deed was chargeable under the 55 Geo. 3, c. 184, with the ad valorem duty of 1000l., and with nine progressive duties of 1l. as a conveyance upon the sale of property, the amount of the consideration money as expressed on the deed exceeding 100,000l., but stated a special case for the opinion of this court: Held, first, that the crown was entitled to the smaller duty only; and, secondly, (dissentiente Pollock, C. B.) that the counsel for the appellant was entitled to begin; and, thirdly, by the whole court, that the counsel for the crown had the right to a general reply. *Chandos (Marquis of) v. Commissioners of Inland Revenue*, 6 Exch. 464.

STAYING PROCEEDINGS.—*Action—Insolvency.*—The court will not stay an action by the provisional assignees of an insolvent debtor against an alleged debtor of the insolvent, on the ground that by an order of nisi prius, made in an action between the insolvent himself and the same debtor for the same cause of action, all matters in difference in the cause were referred to an arbitrator, before whom the matters so referred are still pending. *Sturgis v. Curzon (Lord)*, 21 Law J. (N. S.) Exch. 38.

TITHE COMMUTATION ACT.—*Evidence—Books of former incumbent.*—For a time longer than that prescribed by the Tithe Commutation Act, 2 & 3 Will. 4, c. 100, an annual payment of 20l. had been paid to the rectors of the parish of W. by the occupier of the land in R., a hamlet in that parish. This appeared from a number of terriers from 1579 to 1823, and an account book, kept by a former incumbent, of the receipts and payments in respect of the parish between the years 1767 and 1803. In many of the entries, glebe lands in R. were referred to, and the 20l. was said to be for the glebe and tithes. And upon a feigned issue under the Tithe Commutation Act, the jury found that the 20l. had been paid quarterly during the requisite statutable period, partly for tithe and partly for glebe, and not for tithe alone: Held, that upon such finding the payment of 20l. could not be considered a valid modus in discharge of the tithes of R., within the 2 & 3 Will. 4, c. 100; nor could it be treated as having originated in an arrangement made before the disabling statutes, whereby such payment was agreed to be made in respect of the glebe and tithes, and the incumbent, with the consent

of the patron and ordinary, alienated the glebe lands, and thus upheld as a valid discharge of the tithes, inasmuch as the facts showed that subsequent to the disabling statutes, the glebe land remained in the ownership of the incumbent: Held also, that the account book of the former incumbent had been properly admitted in evidence. *Young v. Clare Hall (Masters, Fellows and Scholars of)*, 21 Law J. (N. S.) Q. B. 12.

TRESPASS.—*Justification under writ of fi. fa.*—*Admission of warrant in pleadings.*—In trespass for breaking and entering the plaintiff's house and taking his goods, defendant pleaded a justification under a fi. fa. and warrant of execution against the goods of one G. H., which warrant was delivered to the defendant, a bailiff, to be executed, and that under the authority of the same the defendant entered, &c. The plaintiff replied de injuriâ, admitting the writ, the making of the warrant, and the delivery thereof to the bailiff: Held, that the existence of a warrant was admitted by the replication, and that the defendant was not bound to prove it. *Hewitt v. Macquire*, 21 Law J. (N. S.) Exch. 30.

TROVER.—*Mortgage of goods—Assignees.*—A., by deed dated the 28th of September, 1845, conveyed certain goods to B. absolutely, subject to a proviso that if he should pay to B. the sum secured on the 22nd of March, 1850, or any earlier day, after receiving from B. fourteen days' notice, and should pay the interest meanwhile half-yearly, then the conveyance should be void. By the deed it was also agreed that, until a default in payment of the principal as before specified, or until default in payment of the interest after notice to pay, A., his executors and administrators, should be allowed to hold and enjoy the goods. No notice for earlier payment was given to A., pursuant to the power contained in the deed, nor any notice for payment of the interest, and he continued in possession of the goods until the 13th of December, 1849, when he became bankrupt, and the defendants, who were his assignees, then took possession of the goods, and sold them on the 19th of February, 1850. B. had previously assigned the goods to the plaintiffs: Held, that although the right to the possession of the goods was vested in A. until the 22nd of March, 1850, (defeasible by nonpayment of the principal and interest according to the provisions of the deed,) yet that the sale of the goods before that day put an end to the term, and that the assignees had thereby been guilty of a conversion, for which the plaintiffs were entitled to maintain trover. *Fenn v. Bittleston*, 21 Law J. (N. S.) Exch. 41.

USE AND OCCUPATION.—*Mortgagor and mortgagee.*—Debt for use and occupation. Plea, that the premises in question had been mortgaged to L. S. to secure the repayment of 200*l.* and interest in six months; that before the defendant began to use and occupy the said premises, the said six months had elapsed without the repayment of the said sum of 200*l.*, which still remained due; that until the commencement of the suit, the mortgage continued

the control and management of the premises; that before the commencement of the suit the defendant was required by notice to pay to the assignee of the mortgagee the amount sought to be recovered, and that from the time of the giving of such notice, the defendant was liable to pay the same to such assignee: Held, upon demurrer, that the plea was no answer to the action. *Semble*, that if payment had actually been made under a claim by the mortgagee, such payment might have been pleaded as a defence to the action. *Wilson v. Dunn*, 21 Law J. (N. S.) Q. B. 60.

VENDOR AND PURCHASER.—*Conditions of sale—Identity.*—A contract of sale described the property purchased as “the cottage and paddock, comprising 1A. 2R. 8P., situate at, &c., described in the particulars as lot 1.” The description of lot 1 in the particulars was, “the property comprises 1A. 2R. 8P., situate, &c., consisting of a cottage and paddock, in the occupation of Mr. P.” By the contract of sale the title and conveyance were to be completed according to the conditions of sale. One of these was, “the property comprised in the particulars is presumed to be correctly described, and the quantity of the land shall be taken as stated, whether more or less (although the title deeds state such quantity to be less), without any compensation on either side. And no other evidence of identity shall be required than that furnished by the title deeds, and the statements therein shall be deemed conclusive evidence of the identity of the property.” On default of completion, the deposit money was to be forfeited. The vendor delivered an abstract of title to 3R. 22P. only: Held, that the mere fact of a title to land, described as consisting of 3R. 22P., being made by the vendor, did not under the circumstances authorize the purchaser to contend that the title had not been made according to the conditions of sale, and that he was bound to complete. *Nicholl v. Chambers*, 21 Law J. (N. S.) C. P. 54.

WRIT OF TRIAL UNDER THE 3 & 4 WILL. IV. c. 42, s. 17.—*Judge's order.*—*Quære*, whether a writ of trial under the 3 & 4 Will. 4, c. 42, s. 17, can be directed to the judge of a County Court, established under the 9 & 10 Vict. c. 95. Per Pollock, C. B. and Alderson, B. it may; per Parke, B. and Platt, B. it cannot. A judge's order directing such writ to be issued to the judge of a County Court, but to be returned by the sheriff, is irregular. *Breese v. Owens*, 6 Exch. 413.

CRIMINAL AND MAGISTRATES' CASES.

CONTAINED IN

21 Law J. (N. S.) parts 1, 3.

APPEAL AGAINST ORDER OF REMOVAL.—*Effect of notice of abandonment.*—If the respondent parish give notice to the appellant parish under the statute 11 & 12 Vict. c. 31, s. 8, that they abandon their appeal against an order of removal, the court of quarter sessions have no power to proceed with the appeal though it has been respited on terms at a previous session; and if they make an order of quashing the appeal, and giving costs to the appellants, such order is null, and cannot be removed into the Court of Queen's Bench for the purpose of being enforced. *Killymaenllwydd v. St. Michael's, Pembroke*, 21 Law J. (N. S.) M. C. 79

APPEAL TO QUARTER SESSIONS.—*Order for costs—Enforcing order under 12 & 13 Vict. c. 45—Repeal of 9 Geo. 4, c. 61, s. 29—11 & 12 Vict. c. 43, ss. 27, 36.*—A conviction under 9 Geo. 4, c. 61, "an act to regulate the granting of licenses to keepers of inns, alehouses, and victualling-houses in England," was confirmed on appeal at the October quarter sessions, 1850, and thereupon an order was made under section 29 of the same act directing the appellant to pay forthwith to the justices their costs, amounting to 20*l.* On the 19th of November the appellant paid 10*l.* on account. On the 8th of February, 1851, the order was removed into the Court of Queen's Bench, under the 12 & 13 Vict. c. 45, s. 18 for the purpose of enforcing the payment of the residue of the costs. On the 21st of the same month an unsuccessful application was made to a judge at chambers to stay proceedings on the order. On the 1st of May a writ of fieri facias was issued to enforce payment of the balance under the order, together with the costs of bringing up the order, 14*l.*, and that amount was levied on the 3rd of March. On the 9th of May a rule nisi was obtained for setting aside the order and the fieri facias, and for a return of the money levied. By section 34 of 9 Geo. 4, c. 61, the writ of certiorari was expressly taken away: Held, first, that the defendant had not precluded himself from objecting to the order either by laches or acquiescence in it. Secondly, that although the defendant could not have removed the order by certiorari, yet being removed under 12 & 13 Vict. c. 45, s. 18, for the purpose of

being enforced, it was open to the defendant, by an original application, to object to the illegality of the order. Thirdly, that section 29 of the 9 Geo. 4, c. 61, was repealed by the 11 & 12 Vict. c. 43, ss. 27 and 36, and the order of sessions invalid; and therefore that the proceedings for enforcing it must be set aside, and the money levied returned. *Reg. v. Hellier*, 21 L. J. (N. S.) M. C. 3.

ARTICLES OF PEACE.—*Reasonable ground of alarm.*—H had written a letter to a young lady, a relative of T. T. afterwards, in consequence of his writing the letter, violently assaulted H., and said "if you write again, I will flog you within an inch of your life." On a subsequent occasion T., meeting H., said to him, "remember what I said to you, I am determined to put an end to your proceedings." The court permitted H. to exhibit articles of the peace against T. *Ex parte Hulse*, 21 L. J. (N. S.) M. C. 21.

CRIMINAL CASE.—*Motion for new trial—Presence in court of defendant.*—A motion for a new trial cannot be made on behalf of the only defendant in a criminal case upon whom sentence of transportation has been passed at the assizes, unless the defendant is present in court: *Semble*, that where there are several defendants, all need not be present in court in order to entitle one or more of such defendants to move for a new trial. *Reg. v. Caudwell*, 21 Law J. (N. S.) M. C. 48.

LANDS CLAUSES ACT.—*Arbitration—To be made before what justice.*—On a reference to arbitration under the Lands Clauses Consolidation Act, 8 & 9 Vict. c. 18, respecting the compensation to be paid to a landowner, whose lands have been taken by a railway company for the purposes of a railway, the arbitrators and umpire may make the declaration required by sect. 33 before a justice of the peace of any county, and are not limited by the interpretation clause, sect. 3, to make it before a justice of the county where the matter in dispute arose. *Davies v. South Staffordshire Railway Company*, 21 Law J. (N. S.) M. C. 52.

LUNATIC PAUPER.—*Order of maintenance—Ground of appeal.*—11 & 12 Vict. c. 31, s. 3.—It cannot be made a valid ground of appeal against an order for the maintenance of a lunatic pauper under the 8 & 9 Vict. c. 126, that the order adjudicating the place of the pauper's settlement was made on hearsay evidence only, the 3rd section of the 11 & 12 Vict. c. 31, which does away with all objections to the depositions taken when an order is made applying equally to orders of removal and orders of maintenance. *Reg. v. St. Peter in Barton-on-Humber*, 21 Law J. (N. S.) M. C. 23.

ORDER OF REMOVAL.—9 & 10 Vict. c. 66, s. 1—*Construction of proviso.*—The first provision in 9 & 10 Vict. c. 66, s. 1, that the several periods of time there specified shall for all purposes be excluded in the computation of the five years' residence to confer irremovability, has the effect of excluding those specified periods in computing whether the pauper has resided altogether five years in the parish, and also whether he had resided there for five years next

before the application for the warrant; and such periods of time are neither to tell in making up the five years, nor to operate as a break in the residence, if altogether it has continued for five years. The expression in the proviso, "the time during which such person shall be a prisoner in a prison," includes all lawful imprisonment in any prison, whether in or out of the parish of residence, without distinction of felony, misdemeanor or debt. The Queen v. Salford overruled. An order for the removal of the wife and children of J. E. was obtained on the 21st of March, 1851. Down to the 8th of January, 1851, J. E. had continually resided in the respondent parish for more than ten years. On that day he was apprehended on a charge of felony, and committed to the county gaol, situate out of the respondent parish, where he remained to the 13th of March following, when he was tried and convicted of felony, and sentenced to two years' imprisonment in a house of correction out of the respondent parish, where he remained when the order of removal was made: Held, that the period of his imprisonment was to be excluded from the computation of his residence in the respondent parish, and that the wife and children were not removable therefrom. *Reg. v. Hartfield (Overseers of)*, 21 Law J. (N. S.) M. C. 65.

2. 9 & 10 Vict. c. 66—*Irremovability*—A pauper had resided in the respondent parish for upwards of five years next before the application for a warrant for his removal, excluding a period during which he was an inmate of the workhouse of the said parish, and excluding also two periods of three weeks, and two weeks, during which he was imprisoned in a house of correction, situate out of the respondent parish, under committals for misbehaviour in the workhouse: Held, that these periods were to be excluded from the computation for all purposes, and that the pauper was consequently irremovable by reason of residence for five years in the respondent parish within the meaning of 9 & 10 Vict. c. 66, s. 1. *Reg. v. St. Andrew, Holborn (Inhabitants of)*, 21 Law J. (N. S.) M. C. 69.

3. 9 & 10 Vict. c. 66—11 & 12 Vict. c. 111—*Removability of wife and children—Maiden settlement*.—An Irishman who had gained no settlement in England had resided with his family in the respondent parish for more than five years up to November, 1849, when he deserted them and went to America. His wife and children continued to reside in the respondent parish till December, 1849, when they became chargeable, and were removed by an order to the appellant parish, where the wife had a maiden settlement: Held, first, that the wife and children were removable from the respondent parish; and secondly, that they were properly removed to the wife's maiden settlement. *Reg. v. Much Hoole (Overseers of)*, 21 Law J. (N. S.) M. C. 1.

PERJURY.—Evidence—Record—Certificate.—An indictment for perjury at the Central Criminal Court charged the prisoner with having committed the perjury on the trial of one D. on a previous indictment for a misdemeanor in the same court: Held, that the minutes and entries of the trial of D. made by the officer of the court,

and produced by him on the trial of the indictment for perjury, were good evidence to prove that D. had been so tried as alleged, and that it was not necessary to produce any record or certificate of the trial of D. *Reg. v. Newman*, 21 Law J. (N. S.) M. C. 75.

POOR.—Removal—Child of Irish parents having birth settlement—8 & 9 Vict. c. 117, s. 2.—The pauper was removed by an order from B. to the place of her birth settlement in England. She was the daughter of Irish parents, neither of whom had ever gained any settlement in England. Her father had lived for thirty-four years in the parish of A., and the pauper had resided with him as a member of his family until about four years before the order, when she left his house without his consent and went to live in parish B. with a man by whom she had some children as his wife, and she continued there to reside with him until his death, when she was relieved by that parish, being at the time of her removal under twenty-one years of age: Held, that she was properly removed to the place of her birth settlement, her father not being, under the circumstances, removable with his family to Ireland under 8 & 9 Vict. c. 117, s. 2. *Reg. v. St. Giles Without (Inhabitants of)*, 21 Law J. (N. S.) M. C. 26.

POOR RATE.—1. Commissioners under local act—Reservoir.—Commissioners had constructed a reservoir in the township of K. across an existing stream, upon land purchased by them under a local act, for the purpose of affording a more regular supply of water to the mills upon the stream, and of cleansing the stream, and promoting the health of the persons residing on its banks. The water flowed from the reservoir along the ancient bed of the stream, and the result obtained was an increased regularity in the motive power of the mills, whereby they were enabled to continue working at times when they would otherwise be stopped. None of the mills benefited by the supply of water were situated in K., but in other townships lower down the stream. The commissioners were empowered to levy rates upon the mills, to be applied in paying interest upon the money borrowed for constructing the reservoir, and the necessary charges of its maintenance, and the forming a reserve fund, to meet any extraordinary contingency, or for paying off the principal borrowed. The commissioners were rated to the relief of the poor of K. in respect of the reservoir at a sum which was admitted to be a proper assessment on the occupiers of the reservoir, if the works constructed and carried on by the commissioners had been a private undertaking of persons who had increased the available supply of water to the mill-owners, as was done by the reservoir, and who at pleasure could allow or refuse the mill-owners the benefit of such increased supply: Held, first, that the commissioners were liable to be rated in K. for the reservoir; and, secondly, that the amount of the assessment was correct. *Reg. v. Kentmere (Inhabitants of)*, 21 Law J. (N. S.) M. C. 13.

2. Exemption from—6 & 7 Vict. c. 36—*Primary object of society.*—A building was erected by a society of persons for the pur-

pose of being used and was used as a library and newsroom by the members of the society for the time being, who had paid their subscriptions, and conformed to the rules of the society. There were 400 shareholders, who could transfer their shares, and each of whom paid a subscription, and had then the full benefit of the institution. The institution consisted of a library for general reference and circulation among the subscribers, and comprising standard works on scientific subjects as well as general literature; a reading room supplied with periodicals, pamphlets, &c., and a newsroom, where newspapers, the London Gazette, and reports of the markets, were provided; and where advertisements of sales were occasionally laid upon the table by individual subscribers. The commercial and general directories were also kept in the library for the purpose of reference; the books and newspapers were purchased by the annual subscriptions of the members. The institution was supported in part by annual voluntary subscriptions, and did not, and by its laws could not, make any dividend, &c., in money to any of its members: Held, that this institution was not entitled to be exempt from rates by 6 & 7 Vict. c. 36, as a society established exclusively for the purposes of science, literature, or the fine arts, its primary object being for the private benefit and convenience of the subscribers only. *Reg. v. Gaskell*, 21 Law J. (N. S.) M. C. 29.

3. *Exemption*—“*United Service Institution*”—*Purposes of science, literature, &c., exclusively*—6 & 7 Vict. c. 36.—The “United Service Institution” comprised in part a museum of natural history, curiosities and armour, a library, lecture-room, and rooms for meetings of the members and council of management on the business of the institution. By the deed of trust founding the institution, and by the laws, it was declared to be instituted as a central repository of objects of professional art, science and natural history, and for books and documents relating to those studies, or for general information and the delivery of lectures on appropriate subjects. By the same deed, the trustees were to stand possessed of all land, &c., monies transferred to them, and all books, specimens and models, and other articles belonging to the institution; and it was expressly provided by a law of the institution, that no dividend, gift or bonus in money should be made unto or between any of its members, and that the whole of its property should be exclusively applied for carrying into effect its design as a central repository for objects of professional art, science and natural history, and for books and documents relating to those studies, or of general information, and for the delivery of lectures on appropriate subjects. The ordinary membership was limited to military and naval officers, and certain civil functionaries and candidates for commissions in the army. Foreigners of distinction, eminent individuals, benefactors to the institution (including ladies), and the corps diplomatique, might be admitted as honorary members, and foreign naval and military officers as corresponding members. The members had the privilege of introducing friends to all the rooms of the institution except the library: Held, that the institution could not

be considered as "established exclusively for the purpose of science, literature or the fine arts," and therefore was not exempt, under 6 & 7 Vict. c. 36, from being rated in respect of the part described. *Reg. v. St. Martin's-in-the-Fields (Churchwardens and Overseers of)*, 21 Law J. (N. S.) M. C. 53.

RATE.—*Construction of Lighting Act*—*Tenements and hereditaments.*—A local act for lighting a hamlet enacted that rates should be laid upon all persons who should inhabit, use, or occupy, or be in possession of or enjoy, any messuage, tenements, houses, warehouses or other buildings, tenements or hereditaments, situate or being in such of the streets, &c., or other public passages and places within the hamlet, as should from time to time be lighted by virtue of the act: Held, that the general words "tenements and hereditaments" included only things ejusdem generis with those before mentioned, and which were capable of being inhabited and benefited by the act, and that a water company was not rateable in respect of its pipes laid in the ground under the streets of the hamlet. *Reg. v. East London Waterworks Company*, 21 Law J. (N. S.) M. C. 49.

EQUITY.

Comprising the Equity Cases contained in the following Reports:—

9 Hare, part 2.

3 De Gex & Smale, part 3.

2 Simons, part 1.

21 Law Journal (N. S.) parts 1, 2, 3.

ACCUMULATION.—*Thelluson's Act.*—A testator gave his residuary personal estate to A. and B. in trust to accumulate the income during the life of his niece, and on her death to transfer the capital and accumulations to her children in equal shares; the shares to be vested in her sons at twenty-one, and in her daughters at that age or marriage. The niece lived more than twenty-one years after the testator's death: Held, that the direction to accumulate was not a provision for raising portions, within the meaning of the second section of the Thelluson Act; and that therefore it became void under the first section, at the expiration of twenty-one years from the testator's death, and that his next of kin were thenceforth entitled to the income of the capital and accumulations. *Bourne v. Buckton*, 2 Sim. 91.

ADMINISTRATION.—1. A creditors' suit stayed, on application for the executors, after a decree in a suit by residuary legatees for the

administration of the same estate, notwithstanding there might be inquiries directed in the legatees' suit, which would not have been necessary in the creditors' suit; it being competent to the master to make a separate report, and thereby prevent the payment of the creditors from being delayed by the business of the ultimate administration of the estate. *Golder v. Golder*, 9 H. 276.

2. *Decree*.—In a suit for the administration of an estate in which an infant is interested, it is not necessary to present a petition for a reference as to the maintenance of the infant. The court will direct the reference by the decree. *Cross v. Bevan*, 2 Sim. 53.

ADMINISTRATOR DE SON TORT.—*Personal representative*.—The widow of a deceased debtor, without taking out letters of administration, got in all the assets of her husband and compounded with his creditors. Upon a claim by a creditor to obtain payment of a debt due to him in full: Held, that a legal personal representative of the intestate ought to be made a party, and leave was given to amend. *Creaser v. Robinson*, 21 Law J. (N. S.) Chan. 64.

ASSIGNEE.—*Bankruptcy—Costs out of pocket*.—An assignee who had acted as solicitor to the fiat was allowed to charge for his clerk's time employed in the business of the bankruptcy as costs out of pocket, but not any profit thereupon. *Ex parte Newton*, 3 De G. & S. 584.

BANKRUPT.—1. *Amending petition to annul does not take it out of statutory period*.—A petition of one of the bankrupts to annul the fiat was wrongly intitled: Held, that the court might, after the expiration of twenty-one days from the insertion of the advertisement, permit the title to be amended, and the petition to be served on the other bankrupt, and that these steps did not render the amended petition a new proceeding, so as to be precluded by the lapse of the twenty-one days. *Ex parte Lord, In re Lord*, 3 De G. & S. 607.

2. *Certificate*.—An attorney employed to receive money and pay it to the client's account paid it to his own, and, on the client bringing an action, vexatiously defended it, and filed a bill (which was dismissed) to restrain execution. He was afterwards found bankrupt as a scrivener: Held, that the conduct of the bankrupt was not conduct as a scrivener, so as to be capable of being regarded in reference to the allowance of his certificate. *Ex parte Spicer, In re Mathias*, 3 De. G. & S. 601.

BANKRUPTCY.—1. *Act of*.—A fiat was sued out, founded on an omission to pay or secure a debt according to the 1 & 2 Vict. c. 110, s. 8, which enacts that such omission shall constitute an act of bankruptcy, provided a fiat shall issue within two months after the default. The fiat was not sued out by the creditor who made the affidavit of debt, and was afterwards annulled for want of prosecution. A second fiat then issued after the expiration of the two months: Held, that the failure to pay, &c. constituted a sufficient act of bank-

ruptcy to support the second fiat. *Ex parte Parker, In re Parker*. 3 De G. & S. 575.

2. *Partnership*.—A trader, on a dissolution of partnership, left at the place of business a direction that letters were to be addressed to him at a particular post-office at a shop. The continuing partner afterwards instructed a solicitor to call a meeting of creditors, and the solicitor notified this to the retired partner, who neither sanctioned the meeting nor attended it: Held, that neither of these omissions constituted an act of bankruptcy. *Ex parte Addison*, 3 De G. & S. 580.

BARON AND FEME.—*Petition—Payment of money to husband*.—A sum of money had been paid into court to the account of a female infant, a ward of court. The infant married, and a petition was presented by her and her husband for payment of the money out of court to the husband upon the authority of two cases cited. The court disapproved of the principle upon which the previous cases had been decided; but allowed the petition on affidavits that it would be beneficial for the husband to receive the money. *In re Cooke*, 21 Law J. (N. S.) Chanc. 145.

BENEFIT BUILDING SOCIETIES.—*Purchaser—Conveyance—Real estate—Illegal contract—Jurisdiction*.—The trustees of a benefit building society having, through a shareholder as their agent, purchased an estate out of the funds of the society, and paid a sum of money on account of the deposit, filed their bill against their agent, who had himself obtained a conveyance of the estate, which he refused to convey to the trustees of the society, to compel him to convey the estate to them upon the trusts and for the purposes of the society. Upon a demurrer for want of equity and for want of parties: Held, that the trustees had power to institute this suit to obtain a conveyance, though the purchase which had been made was alleged to be illegal and contrary to the act of parliament and the rules of the society; and that a suit instituted by the trustees, authorizing the purchase on behalf of themselves and all the other members and shareholders of the society, was sufficient; that it was not necessary to bring all the members before the court to consent to the purchase, and that the jurisdiction of this court was not ousted by the appointment of a separate jurisdiction for the regulation of the affairs of these societies. *Mulloch v. Jenkins*, 21 Law J. (N. S.) Chanc. 65.

BILL OF EXCHANGE.—*Lien*.—A bill of exchange thus drawn: "Pay C. & Co. 7500*l.* value of same, which place against coffee per Vigilant:" Held, not sufficient to give a lien on the coffee for the amount of the bill. *Ex parte Carruthers, In re Higginson*, 3 De G. & S. 570.

CHARITY.—*Bequest to build and endow, conditional on a gift of land—Mortmain stat.*, 9 Geo. 2, c. 36.—J. O., by his will, directed his trustees, after the decease of his wife, to transfer funds of the value of 8000*l.* sterling to the corporation of G., and a like sum

of 8000*l.* to the corporate bodies of C. T. and W. upon trust in each case thereout to raise 1300*l.*, and to lay out the same in the foundation, building, and furnishing a hospital or almshouse for the city of G., and each of the other places C., T., and W., in the event of any land being given or granted to the corporation for the purpose of his charity within the period of ten years next after his decease, under the provisions of 9 Geo. 2, c. 36. And he declared that no part of the trust monies should be applied in the purchase of land; and in the event of no land being granted within the ten years, then the principal trust monies incapable of being applied were to fall into his residuary estate. Land, as a site for the hospital, was conveyed to the corporation of G., and to each of the corporate bodies of C., T., and W., shortly before the expiration of the ten years, but the deed conveying the land to the corporation of G. was not enrolled until five days after the ten years had expired: Held, that the deeds conveying the land were good under the 9 Geo. 2, c. 36. That a bequest made on an inducement to third parties to convey land in mortmain, and not to take effect unless land should be conveyed accordingly, was void: and that a bequest which tended directly to bring fresh lands into mortmain was void: and that a bequest of money to be expended in the erection or repair of buildings was void, unless an intention was clearly expressed that the money was to be expended upon land already in mortmain. *Trye v. The Corporation of Gloucester*, 21 Law J. (N. S.) Chanc. 81.

2. *Grammar school*—Statutes 52 Geo. 3, c. 101 (*Sir Samuel Romilly's Act*), 1 & 2 Geo. 2, c. 92 (*Charity Commissioners Act*), 3 & 4 Vict. c. 77—*Religious tests*—*Costs*.—By order made in 1844 on petition, and by a subsequent order made on petition under Sir Samuel Romilly's Act in 1848, the court confirmed certain schemes regulating the management of the Free Grammar School at Kidderminster (found by inquisition taken in 9 Car. I. to be then existing for the instruction of the children generally of the inhabitants in good literature and learning), and restricting it to forty free boys, from eight to fifteen years of age, as were members of the Church of England, and in case of deficiency, to children of other persons being members of the Church of England to be instructed gratuitously in Latin and Greek, and for certain payments in other branches of education, giving the masters the privilege of taking boarders to compete with the free boys for the prizes, and power to the trustees to admit any additional number of boys at certain payments, requiring the masters to be members of the Church of England, and the head master to be a graduate of one of the English universities, and in holy orders, and allowing the latter to occupy a house exchanged for certain of the trust estates under Sir Eardley Wilmot's Act (3 & 4 Vict. c. 77). On information filed in 1849 to vary the schemes in the above particulars, and to set aside the exchange, the court varied the scheme as to the religious test (without costs) according to the decree in the Warwick School case (1), and

dismissed the remainder of the information, with costs. *Attorney-General v. Worcester (Bishop of)*, 21 Law J. (N. S.) Chanc. 25.

CLAIM.—1. *Allegation in—Trustees' Indemnity Acts* (10 & 11 Vict. c. 96, and 12 & 13 Vict. c. 74)—*Jurisdiction.*—A claim, not stating all the facts of the case within the plaintiff's knowledge, is liable to be dismissed with costs; and if the plaintiff withholds those facts, and takes the chance of relief from what may turn up from the affidavits, the court will not adjudicate upon the claim. Where trustees have paid any monies into court under the Trustees' Indemnity Acts, the remedy of a plaintiff as to the sum paid in can be prosecuted only under those statutes, and not under the ordinary jurisdiction of the court by bill or claim. *Goode v. West*, 21 Law J. (N. S.) Chanc. 127.

2. *Parties—Mortgagees.*—Upon a claim by an equitable mortgagee against a mortgagor, asking for a sale, and also that the several other mortgagees might be summoned before the master, or that a decree might be made to ascertain what mortgages there were, and their priorities, the court refused the order. *Burgess v. Sturgis*, 21 Law J. (N. S.) Chanc. 53.

CONTRACT.—*Alienation of land.*—Whether the court will enforce against defendants, having in their hands proceeds of the sale of lands situated out of the jurisdiction, the equities to which such proceeds would have been subject if the land had been situated within the jurisdiction, depends upon the question, whether the contract which is sought to be enforced was or was not by the *lex loci rei sitæ* capable of being fulfilled. If a contract relating to land, situated out of the jurisdiction, be one which the *lex loci rei sitæ* renders incapable of fulfilment, the court will not enforce the contract against the proceeds of a sale of such land coming to the possession of parties within the jurisdiction, though they take such proceeds bound by the same equities as affected the party to the contract under whom they claim. The rights of the parties interested in the proceeds of the sale of land, situated out of the jurisdiction, do not cease to be governed by the *lex loci rei sitæ* by the circumstance of such proceeds being brought in specie within the jurisdiction. A law permitting alienation of land only upon the terms of the proceeds being applied in a particular manner, is a restraint upon alienation; and restraints upon the alienations of land are always governed by the *lex loci rei sitæ*. *Waterhouse v. Stansfield*, 9 H. 234.

CUSTODY OF INFANT.—2 & 3 Vict. c. 54.—If, independently of the act of 2 & 3 Vict. c. 54, the court can exercise jurisdiction upon the petition of a mother having the custody of her infant child, for the continuance of such custody, it may do so, although the petition is intitled in the matter of that act as well as in the matter of the infant. Where the mother of an infant under seven years of age, and having custody of it, is living separate from the father, and has a good defence to a suit by him for restitution of conjugal rights, the court may make an order continuing to the mother the custody

of the infant, such a case, although not within the letter, being within the equity of the 2 & 3 Vict. c. 54. *In re Tomlinson*, 3 De G. & S. 371.

ESTATE TAIL.—*Devise—Freehold.*—A testator, who died in 1833, demised his residuary real and personal estate to his eldest son and his heirs, executors, &c., provided and his will was, that in case his said son should die without leaving any lawful issue of his body, such part of his residuary estate as was freehold, and situate in certain places, should, at his death, be divided into two equal parts, one of which parts he gave to his second son and his heirs, and the other to his daughter and her heirs: Held, as to such part of the testator's residuary estate as was freehold, and situate in the places named, that his eldest son took not an estate tail in it, but an estate in fee, with an executory devise over to take effect at his death, in case he should have no issue then living. *Ex parte Davies*, 2 Sim. 114.

EXAMINATION.—*Of a defendant as witness on behalf of plaintiff.*—After the passing of the act 6 & 7 Vict. c. 85, two (of four) trustees of a charity, who were defendants to an information complaining of acts of mismanagement, were examined in chief by mistake as witnesses by the relator, without any order for that purpose, instead of being cross-examined. The relator did not tender the depositions in evidence: Held, that by reason of their examination no decree could be made against them: held, also, that the 32nd Order of August, 1841, did not in such circumstances entitle the relator to relief against the remaining trustees. On a motion made on behalf of the relator, after the cause had been argued, to suppress the depositions of the trustees, it was ordered that they should be suppressed, on the relator entering into admissions, and on the defendants being permitted to add to their evidence; but on appeal the order was discharged, the Lord Chancellor being of opinion that even on these terms, the relator could not be relieved from the mistake. *Attorney-General v. Dev*, 3 De G. & S. 488.

INJUNCTION.—*Nuisance.*—Injunction granted after a trial at law to restrain the ringing of the bells of a Roman Catholic church, so as to occasion any nuisance or disturbance and annoyance to the plaintiff, who resided very near to the church. A bill may be filed to restrain a public nuisance, without making the attorney-general a party, if the plaintiff sustains special damage from the nuisance. *Soltau v. De Held*, 2 Sim. 133.

2. Patent—Infringement—Foreigners—Jurisdiction.—Upon the plaintiffs entering into the usual undertaking to bring actions against the defendants, an injunction was granted to restrain foreign owners of foreign vessels, whilst in this country, from infringing a patent within the limits of the grant, unless and until they obtained proper licenses from the owners of the patent, where the invalidity of the patent had been *bonâ fide* twice unsuccessfully contested at law in an action brought by the patentee, and once in an action against him and the assignees of the patent under a writ of *sci. fa.* to repeal the

grant of the letters-patent. *Caldwell v. Van Vlissingen*, 21 Law J. (N. S.) Chanc. 97.

3. *Railway Company*.—A railway company, under the powers of the Lands Clauses Consolidation Act, 1845, gave the usual notice of reference to a jury to assess the value of a portion of a house, shop and outbuildings, which had been occupied together, coffee being roasted in the outbuildings and sold in the shop. They gave a bond to the lessee, her heirs, executors, administrators and assigns, and paid into court 600*l.*, the amount at which the value of the buildings taken by them had been estimated under the provisions of the act; they then proceeded to enter into possession, and to pull down the buildings. The lessee filed her bill, to which neither the superior landlord nor her sub-lessee was a party, for an injunction to restrain the company from continuing in possession of the buildings on two grounds—first, that the buildings taken were part of a manufactory, and could not be taken without the rest; and secondly, that the bond given was invalid by reason of its being conditioned for payment of the sum specified to the heirs, executors, administrators or assigns of the lessee. On a motion for the injunction, the court considered that there was a serious question to be tried at law whether the whole proceedings of the company had not been illegal, yet, as the only complaining party was not in the occupation of the premises, and was not liable to personal inconvenience pending the litigation at law, and as the company, in any event, was entitled to take the property, forbore to grant an injunction, upon the company paying into court a further sum of 600*l.*, and undertaking to abide by such order as the court might make as to proceeding before a jury under the notice they had given, and as to the possession of the buildings. The court may, upon a motion for an injunction, direct a case for the opinion of a court of law, although it grants no injunction, but merely directs the motion to stand over, and although the defendant objects to any case being directed. *Dakin v. London and North-Western Railway Company*, 3 De G. & S. 415.

JOINT-STOCK COMPANIES WINDING-UP ACTS.—

1. A petition to discharge a winding-up order dismissed with costs on account of delay in presenting it. *In re Chepstow, Gloucester and Forest of Dean Railway Company*, 2 Sim. 11.

2. The members of a completely formed joint-stock company are not liable for the expenses incurred in attempting to form the company, unless they have made themselves liable, either expressly or impliedly, after the complete formation of the company. Therefore, where the charges in a solicitor's bill, for business done for the company before its complete formation, could not be distinguished from the charges for business done subsequently, the court held that the master charged with the winding-up of the company had rightly allowed the bill only as a claim, with liberty to the solicitor to bring such action as he might be advised. *In re Terrell's case*, 2 Sim. 126.

LEGACY.—1. A testatrix devised copyholds to A., subject to the payment of 400*l.* to a legatee. The legatee's husband attested the

execution of the will. The devisee sold to a purchaser for the full value of the estate, both parties treating the legacy as void, and not noticing it in the conveyance. The purchaser afterwards resold: Held, that the legatee had no remedy in equity against the devisee to recover from him personally the amount of his legacy. *Jillard v. Edgar*, 3 De G. & S. 502.

2. Lapse—Residuary estate—Joint bequest—Survivorship.—A testatrix gave her residuary estate, after the death of three persons, upon trust to pay and assign it equally between G. B. and E. B., their executors, administrators and assigns; but if neither of them should be living at the death of the survivor of the tenants for life, she gave the same to F. H. G. B. died in the lifetime of the testatrix, but E. B. survived the tenants for life: Held, that the gift lapsed as to a moiety of the residuary estate; that no joint estate was created between G. B. and E. B.; that no right by survivorship arose by implication; that the event had not happened upon which the gift over was to take effect, and that one moiety of the residuary estate was undisposed of and belonged to the next of kin of the testatrix, and that the costs must be paid out of her estate. *Baxter v. Losh*, 21 Law J. (N. S.) Chanc. 55.

LUNATIC DEFENDANT.—In a suit to which a lunatic and his committee were defendants, the court declined, before decree, to make an order, on motion, substituting a new committee as a defendant. *Rudd v. Speare*, 3 De G. & S. 374.

MORTGAGE.—*Equitable deposit—Administrator.*—G. S. insisting that J. F., the owner of an agreement for a building lease, had deposited it to secure to him 900*l.*, claimed payment of the money from the administrator of J. F., who had expended money out of his own pocket in finishing the houses, and had obtained leases from the lessors, and questioned the deposit and the extent of the advance if any had been made: Held, that the affidavits affording evidence of deposit, the court was bound to act upon them; that when the deposit was made, it made G. S. a title to a mortgage, and that he had a right to payment; and the court made a decree for an account and sale of the houses comprised in the agreement. *Sims v. Helling*, 21 Law J. (N. S.) Chanc. 76.

MORTGAGEE'S ORDER.—1. A loan was made on a deposit of agreements for building leases, with a written memorandum; afterwards the leases were obtained and deposited in lieu of the agreements but without any fresh memorandum: Held, that, on the usual petition of the equitable mortgagee in bankruptcy, the order ought to be made as in cases of no written memorandum. *Ex parte Anderson*, *In re Ash*, 3 De G. & S. 600.

2. Not granted where bankrupt not personally liable to pay.—A mortgagee cannot have the usual order where the bankrupt is not the mortgagor but a purchaser of the equity of redemption, although the vendors of the equity of redemption with whom the bankrupt has covenanted to pay the debt join in the petition, and pray to be at

liberty after paying the deficiency to prove for the amount. *Ex parte Keightly*, 3 De G. & S. 583.

OUTLAWRY.—*Plea—Court of Bankruptcy.*—Upon a plea of outlawry, it was held that an order of the Court of Bankruptcy directing the plaintiff to prepare and file his accounts by a certain day, and the certificate and proclamation of the court that he had failed to surrender himself on that day, did not amount to a formal judgment of outlawry such as would support the plea. *Plea overruled. Winthrop v. Elderton*, 21 Law J. (N. S.) Chanc. 145.

PARTNERSHIP.—*Freehold and copyhold.*—Two partners in a brewery, part of the property of which consisted of freehold and copyhold estates, covenanted that the survivor should have the option of purchasing the share of the deceased partner in the property of the partnership at a valuation; and the survivor accordingly exercised such option, and paid to the executors of the deceased partner the amount at which his share was valued. The share of the deceased partner and his legal estate in part of the freehold and copyhold estates of the partnership descended or became vested in his infant heir; but the court refused upon petition or motion under the Trustee Act, 1850, without suit, to declare the infant heir a trustee for the surviving partner. *In re Burt*, 9 H. 289.

PAYMENT OF MONEY OUT OF COURT.—1. *Administration, whether diocesan or prerogative—Trustees' Relief Act.*—Trustees and executors of personal estate, situate wholly in the diocese of C., sold and realized the same. The will was proved in the diocesan court. One of the trustees and executors died in the lifetime of the other, and on the death of the other trustee and executor, letters of administration to his estate were taken out in the same court by A., B., and C. One of the parties entitled to a share under the will of the testator died intestate possessed of no other property, and letters of administration to his estate were taken out by his next of kin in the same court. A., B., and C., paid the share into court, under the stat. 10 & 11 Vict. c. 96. The person entitled to the share petitioned for its payment out of court, and the same was directed, notwithstanding that prerogative letters of administration were not taken out. *In re Knowles*, 21 Law J. (N. S.) Chanc. 142.

2. *Motion.*—The court will not make an order for payment of money out of court except upon petition, however small the sum may be. *Blind School v. Goren*, 21 Law J. (N. S.) Chanc. 144.

PAYMENTS BY SOLICITORS.—*Estates, sale of.*—Costs, charges, and expenses of, and incident to, the sales of the real estates of the testator in the cause, were, by the decree, ordered to be taxed and paid. On making out these costs, charges, and expenses, it appeared that 340*l.* had been paid for surveying and selling the estates, upon which the fee of taxation of 3*l.* per cent. attached. In order to avoid this fee, a motion was made, all parties consenting, to vary the order by only directing the taxing master to add to the amount of the taxed costs of the plaintiff any sums which he should find to have

been properly paid by them to any surveyor or other person as his charge for valuing or otherwise in reference to the sales. The court varied the order accordingly. *Bellas v. Harmer*, (*Bart.*), 3 De G. & S. 454.

PETITION.—*To discharge order for surrender obtained by incorrect statement.*—A bankrupt obtained an order for leave to surrender, and for his costs to be paid out of the estate, on a petition supported by his affidavit, stating that his surrender had been prevented by his having left England on account of family disagreements. The petition was unopposed. On appearing before the commissioner to surrender, he was examined, and stated that he left England on account of his embarrassments. The assignees therefore petitioned to have the former order discharged; but the court refused to discharge it, holding that the circumstance would be properly regarded when the bankrupt applied for his certificate. *Ex parte Pennell, In re Turner*, 3 De G. & S. 555.

PLEADING.—1. *Contract—Fraud.*—A supplemental suit grafts into the original suit the new parties brought before the court by the supplemental suit, and enables the court to deal with the parties to both records as if they were all parties to the same record. A defendant to an original suit is not to be made a party to a supplemental suit, on the mere ground of a right to question the representative character of a defendant to the supplemental suit; for his title to sustain that character cannot be tried in this court. The original defendants are necessary parties to a supplemental bill, where the supplemental suit is occasioned by an alteration after the original bill is filed, affecting the rights and interests of the original defendants as represented on the record; but they are not necessary parties to a supplemental bill, where there may be a decree upon the supplemental matter against the new defendants, unless the decree will affect the interests of the original defendants; nor are they necessary parties, where the supplemental bill is brought merely to introduce formal parties. To a bill filed by the heir to set aside a purchase from his ancestor, on the ground of fraud, stating also that the purchase-money, or alleged consideration, was not paid, the personal representative of the ancestor having an interest in the question whether the contract is valid or not, is a necessary party; and if such personal representative be brought before the court by supplemental bill, the original defendant should be made a party to such supplemental bill. *Wilkinson v. Fowkes*, 9 Hare, 193.

2. *Demurrer.*—A cross-bill was filed by a defendant to an original suit, relating to the subject of that suit, and setting forth facts not contained in the original bill and forming a defence to it, and praying a discovery, and that the suit might be taken as a cross-suit, and for general relief. The original bill was then dismissed with costs by an order of course, on the motion of the plaintiff; but the plaintiff in the cross-suit insisted on proceeding with his suit. A demurrer to such cross-bill was overruled. *Powell v. Hall*, 3 De G. & S. 456.

3. *Documents—Demurrer.*—By the rules of a building society, members were at liberty to withdraw on giving notice, and on certain

terms as to the return of a portion of their subscriptions. A bill was filed by some members, who had withdrawn, on behalf of themselves and the other members of the society (except the defendants) against the directors, charging them with fraud, and seeking an account of all the dealings and transactions of the society, and that the defendants might make good the losses arising from their fraud, breach of trust, wilful neglect or default: Held, that the members who had not withdrawn ought to be parties by representation or otherwise, and were not sufficiently represented by either the plaintiffs or the defendants, and the bill not alleging that their names were unknown to the plaintiffs, a demurrer for want of parties was allowed. The usual reference in a bill to a document itself, part of which alone is stated, does not entitle the plaintiff, on demurrer, to read the parts of the document which are not set out. *Harmer v. Gooding*, 3 De G. & S. 407.

4. *Testator*.—The bill stated that defendants, relations of a testator, had acquired influence over his mind, and had induced him to make by his will an improper and unequal distribution of his property among his relations, to the plaintiff's prejudice. It then stated that after the execution of the will, the testator became of unsound mind, and while in that state made under-leases and transfers of stock in favour of the same defendants, and by their procurement; and the bill prayed that these under-leases and transfers might be set aside. The defendants by their answer admitted that by their attention to the testator they might possibly have acquired some influence over his mind, but they denied that they had ever used it to the prejudice of the plaintiffs: Held, that upon these pleadings the plaintiffs could not impeach the under-leases and transfers, on the ground of their having been obtained by undue influence, no such issue being raised by the bill, and the allegations on the answer not having the effect of enlarging the issues for this purpose. *Hayward v. Pursey*, 3 De G. & S. 399.

POLICY OF LIFE INSURANCE.—14 *Geo. 3, c. 48*.—If upon a proposal and agreement for a life insurance, a policy be drawn up by the insurance office in a form which differs from the terms of the agreement, and varies the rights of the parties assured, equity will interfere and deal with the case on the footing of the agreement, and not on that of the policy. The stat. 14 *Geo. 3, c. 48*, does not prohibit a policy of life assurance from being granted to one person in trust for another, where the names of both persons appear upon the face of the instrument; nor does the effecting of such an insurance in any way contravene the policy of the statute. An insurance company having had the chance of a contract of life insurance turning out in their favour, cannot afterwards be permitted, on the ground of the inconsistency of the contract with their rules, to escape from it. *Collett v. Morrison*, 9 Hare, 162.

POST-DATED CHEQUE.—14 & 15 *Vict. c. 99*.—Where a suit was instituted for the delivering up of a cheque, given as part of the consideration for a purchase, which was alleged to have been re-

scinded, and it appeared that the cheque was post-dated, and not stamped, the court on that ground refused to interfere. Under the law of evidence, before 14 & 15 Vict. c. 99, a defendant could not have been examined as a witness for a co-defendant in precisely the same interest. *Carrington v. Pell*, 3 De G. & S. 512.

PRACTICE.—1. It is not necessary to bring to a hearing a suit for the appointment of a receiver pendente lite. *Anderson v. Guichard*, 9 Hare, 275.

2. Where a defendant moves to suppress any of the depositions taken on behalf of the plaintiff, the co-defendant need not be served with notice of the motion. *Barnard v. Papineau*, 3 De G. & S. 498.

3. *Affidavits.*—Where a petition and the affidavits in support of it had been wrongly intituled, and the petition had been amended under an order, the court allowed the affidavits to be taken off the file to be amended. *Ex parte Burton*, 3 De G. & S. 579.

4. *Injunction.*—A bill seeking an injunction to stay proceedings at law was duly answered, without any injunction having been obtained on the original bill; it was then amended, and defendant was served with subpoena to appear and answer on the day following the day on which the eight days from the service of the subpoena expired; the plaintiff obtained as of course the common injunction for want of appearance, without affidavit of the truth of the amendments, on the allegation that the defendant being served with subpoena to appear and answer the plaintiff's bill had not appeared thereto, although his time for so doing had expired. The writ of injunction was sealed on the same day. On the morning of the same day the defendant entered his appearance, but did not serve notice thereof on the plaintiff's solicitor. On a motion by the plaintiff to extend the injunction to stay trial, and on a cross motion by the defendant to dissolve it: Held, that the injunction had priority over the appearance, and that the injunction so obtained as of course for want of answer to the amended bill was regular, and the common injunction to stay trial was extended. *Eyton v. Mostyn*, 3 De G. & S. 518.

5. *Interpleader.*—In an interpleader suit to determine the right of conflicting claimants to portions of an aggregate fund, the court directed inquiries as to the claims of the several defendants, and reserved further directions and costs. One defendant obtained a separate report, finding his title to a portion of the fund; and being unable to set down the case on further directions, in consequence of the claimants of the other portions of the fund not having proceeded to establish their title, presented his petition for payment of the sum found due to him; but the court refused to order such payment upon petition, or until the cause was heard on further directions, and the costs of the suit could be disposed of. *Bruce v. Elwin*, 9 H. 294.

6. *Petition.*—Where a fund bequeathed to one for life, with remainder to a class (the members of which, as well as their shares, had been ascertained by the master), had been carried to a separate account, the court, on petition, presented after the death of the tenant for life, directed the transfer of one ninth part of the fund to the per-

son who appeared on the report to be entitled thereto, without service of the petition on the persons entitled to the other eight-ninths. *Lambert v. Newark*, 3 De G. & S. 405.

7. *Special case*.—After a special case under Sir G. Turner's Act had been set down for hearing, a party interested in the question was born. Practice in such case as to the amendment of the case and the setting it down again. *Thistlewaite v. Garmer*, 21 Law J. (N. S.) Chanc. 16.

8. *Trustees' Relief Act*.—A transfer of a fund paid into court under the Trustees' Relief Act can only be directed by an order made on a petition. *In re Masselin's Trusts*, 21 Law J. (N. S.) Chanc. 53.

PROOF.—1. *Annuity, payment of*.—A trader, upon his daughter's marriage, covenanted to pay, so long as the intended husband and wife, or any issue of the marriage entitled under the provisions of the settlement, should live, such a sum as, with the annual produce of any property which might be received as therein mentioned, would amount to 150*l.*: Held, that the payments of the annuity becoming due after the issuing of a fiat against the trader could not be proved. *Ex parte Evans, In re Foster*, 3 De G. & S. 561.

2. *On bond given in consideration of delivering up voluntary bond*.—A partner in a bank gave a bond to his sister in performance, as it was alleged, of a promise voluntarily made to their father on his death-bed. The sister died, having specifically bequeathed the sum secured by the bond. The bankrupt gave the legatees fresh bonds for sums amounting together to the sum secured by the original bond in consideration of the delivery up of that instrument. Six years afterwards, the partners in the bank, including the obligor, became bankrupt; and it appeared that, at the times of both the transactions, the firm must have been insolvent, and that the obligor must have then known or suspected this to be the case; but that the transactions were entered into fairly, and without reference to this circumstance. There was no evidence, however, of any notice or suspicion on the part of the obligees: Held, that they were entitled to prove upon the bonds. *Ex parte Hookins, In re Gundry*, 3 De G. & S. 549.

3. *Documents*.—Documents of title were deposited with a written memorandum, expressing that they were deposited to secure an annuity also secured by bond. The bond was inrolled, but not the memorandum. The court declined to direct a sale of the property comprised in the security. *Ex parte Miller, In re Swan*, 3 De G. & S. 553.

4. *Joint Stock Companies Winding-up Acts*.—The amount of a call made upon a contributory under the Joint Stock Companies Winding-up Act, 1848, before his bankruptcy may be proved against his separate estate by the official manager, although all the debts of the company are not paid for which the contributory is liable. Where the direction of the master had not been obtained before a proof was tendered by the official manager under a bankruptcy, but no objection was made on this ground to the admission of the proof before the commissioners, the court being satisfied that the proceeding was

not disapproved of by the master: Held, that it was not competent to the assignees to object on appeal from the commissioners' decision, that the master's approbation had not been obtained before the proof was tendered. *Ex parte Brown, In re Fenwick*, 3 De G. & S. 590.

5. *Trustees*.—A trader covenanted by an antenuptial settlement to pay the premiums on certain assigned policies of insurance on his life, or, if he failed to do so, to repay to the trustees the amount which they should pay in respect of the premiums. On his becoming bankrupt: Held, that the trustees could not prove for the amount required by the officers to be paid to keep up the policies during the remainder of the bankrupt's life. *In re Whitmore*, 3 De G. & S. 565.

PURCHASER UNDER DECREE OF THE COURT.—

Reference to master.—A purchaser, under a decree of leaseholds, presented a petition to be discharged from his purchase, on the ground that a share in the property had been bequeathed upon trusts, and that the bequest appeared by inference from the pleadings as to have been assented to; but that some of the cestuis que trustent were infants, and were not before the court. The assent was disputed: Held, that the purchaser was not entitled at once to be discharged, but only to a reference to the master as to the title. *Whitfield v. Lequeutre*, 3 De G. & S. 464.

RAILWAY COMPANY.—*Cases to be sent from Chancery for the opinion of courts of law*.—A question of general law, arising out of circumstances which are likely to occur in other cases, and the decision of which might affect the rights of other persons, is a case in which this court may properly seek the opinion of a court of law. A railway company having acquired a legal right to, and possession of, land, and constructed their railway over the same, under the provisions of their act, another railway company, to whom the legislature had given power to purchase the same land for the purposes of their undertaking, was restrained by injunction from exercising such power pending the trial of the legal question of the effect of such conflicting powers. As to the effect of two acts of parliament conferring on different companies the right of purchasing compulsory, according to the provisions of the Lands Clauses Consolidation Act, the same plot of land, *quære*. *The Manchester, Sheffield and Lincolnshire Railway Company v. The Great Northern Railway Company*, 9 H. 284.

RENEWAL OF LEASE.—*Under-lessee*.—Equity will not decree the specific performance of a covenant by the mesne landlord with his lessee for the renewal of the lease, after the lessee has wilfully neglected or refused to renew; and the non-payment after demand of the fine which the mesne landlord has paid to the superior landlord amounts to such neglect or refusal. An under-lessee, who is not himself bound to take a renewal of his lease, but who is entitled to the benefit of a covenant by his lessor for the renewal of his under-lease, upon payment of his proportion of the fines and ex-

penses of a renewal by the superior landlord, ought, if he complains of the amount of such proportion required from him by the mesne landlord, to apply without delay to a court of equity to assess the sum which he ought to pay, submitting himself to the jurisdiction of that court to compel him to pay a reasonable sum; and if, instead of making such application, and after notice from his mesne landlord that the fine must be paid by a certain time or his right will be excluded, he should delay the payment, the objection that the sum demanded from him was unreasonable will not excuse his laches. The time from which the lessee will be deemed to have neglected or refused to renew, is not to be computed from the latest time at which the mesne landlord might have procured a renewal, but from the time at which he applies to the under-lessee to contribute to the fine and expense of the renewal which he is about to obtain, or has obtained. *Chesterman v. Mann*, 9 Hare, 206.

REVIVOR.—*Administration suit—Legatee—Demurrer.*—A bill was filed by certain persons as plaintiffs for the administration of the personal estate of a testator, and the usual decree for accounts was taken, the master's report was made, and a decree was made on further directions. The suit having been neglected, the master committed the prosecution of the decree to a party who had been found by the report to be a legatee. The suit afterwards abated by the marriage of one of the female plaintiffs. The plaintiffs having declined to take any proceedings to revive, the legatee filed a bill of revivor. A demurrer to this bill by the plaintiffs in the original suit was allowed. *Williams v. Chard*, 21 Law J. (N. S.) Chanc. 8.

SALE BY ORDER OF THE COURT.—*Reference.*—Where a reference had been directed to inquire whether an offer for the purchase of leaseholds was beneficial, and ought to be accepted, and the master reported in favour of the purchase: Held, that the purchasers were entitled to the rents from the date of the order of reference. *Cheetham v. Sturtevant*, 3 De G. & S. 468.

SOLICITOR AND CLIENT.—1. *Mortgage—Deposit of title deeds—Equitable and legal mortgages.*—Where a mortgagor, a solicitor, prepares the mortgage deed, the mortgagee not employing another solicitor, the mortgagor will be considered to be the solicitor of the mortgagee in the transaction of the mortgage; but the latter will not therefore be deemed to have notice of a prior deposit of the title deeds by the mortgagor, or of any uncommunicated fact which it was the interest of the mortgagor to conceal from the mortgagee. Constructive notice is knowledge imputed by the court on presumption too strong to be rebutted that the knowledge must have been communicated. A legal mortgagee will not be postponed to a prior equitable one, on the ground of not having got in the title deeds, unless there has been fraud, or gross or wilful negligence on the part of the legal mortgagee. Fraud, or gross or wilful negligence, will not be imputed to a mortgagee, who has made bonâ fide an inquiry for the title deeds, and a reasonable excuse has been given for the non-delivery of them to him. *Secus*, if he has not made any

inquiry after the deeds. *Hewitt v. Loosemore*, 21 Law J. (N. S.) Chanc. 69.

2. *Privileged communications—Demurrer.*—A party assigned his property for the benefit of his creditors, one of whom filed a bill to set aside the deed, and insisted that a particular clause inserted in it had been concealed from him. The assignor, in his answer, stated that the creditor had known of the insertion of the clause, and in support of his case proposed to examine the solicitor of the creditor as to what took place on a certain interview between the solicitor and the assignor with reference to the deed. The solicitor demurred to the interrogatory, on the ground that it inquired respecting matters which he only knew from confidential communications made to him by or in his agency for his client while he was acting as his solicitor. The demurrer was overruled. *Gore v. Harris*, 21 Law J. (N. S.) Chanc. 10.

3. *Privileged communications.*—The rule which protects from disclosure confidential communications between solicitor and client, is not founded on the ground of confidence between them, but on that of necessity for the existence of the rule to enable the client properly to defend or prosecute his rights and interests, therefore the rule is inapplicable in cases of testamentary dispositions and as between parties claiming under the testator. And where a question is raised, whether the executors are or are not the trustees for the next of kin, the evidence of the solicitor, who prepared the will, as to what passed between himself and the testator or his agent, on the subject of the will, is admissible on behalf of the next of kin, and will not be suppressed on the application of the executors on the ground of privilege; but all communications between the executors and the same solicitor, acting as their solicitor on the subject of the will of the testator, and after his death, are privileged. Evidence otherwise admissible will not be rejected on the ground that it may disclose an illegal purpose. *Semble*, the existence of an illegal purpose will, as in a case of fraud, prevent the privilege attaching, because it is as little the part or duty of a solicitor to advise his client how to evade the law as it is to continue a fraud. *Russell v. Jackson*, 21 Law J. (N. S.) Chanc. 146.

SPECIFIC PERFORMANCE.—1. *Contract.*—A purchase was to be completed on the 25th of October. Before that day arrived, the purchaser, at the vendor's request, extended the time to the 5th of November. The title, however, was not completed on that day: Held, that the purchaser was at liberty to abandon the contract. *Parkin v. Thorold*, 2 Sim. 1.

2. *Undivided moiety—Misrepresentation.*—A., in a letter addressed to B., said he would let the coal at L. B. to B. on the terms stated in the agreement in the hands of C.; C. had two papers in his hands. One was called terms for letting "coals, &c." at L. B. and G. E.; the other, instructions, &c., "to obtain coals in L. B." A. and another were, in fact, tenants in common in fee of the L. B. and G. E. property. B. assigned his interest to P., who filed a bill for

specific performance of the agreement by A. and the other joint owner, but subsequently his bill was dismissed against the other owner. The prayer of the bill was, that both might specifically perform the agreement, or that A. might perform it if the claim should fail against both: Held, that "coals, &c." was ambiguous, and that it was uncertain which of the documents in the hands of C. was meant. Held, also, that there being no ground of impropriety or misrepresentation by A., the court would not act against him as the owner of an undivided moiety, by decreeing specific performance as to that share, with compensation for the other moiety, which he was unable to demise. *Price v. Griffith*, 21 Law J. (N. S.) Chanc. 78.

STATUTES.—13 & 14 Vict. c. 35, s. 14, and 14 & 15 Vict. c. 83, s. 8—*Cases to be sent from Chancery for the opinion of Courts of Law.*—Questions on which it is proper for the Court of Chancery to send cases for the opinion of Courts of Common Law, or to seek the assistance of the judges of such courts, under the statutes 13 & 14 Vict. c. 35, s. 14, and 14 & 15 Vict. c. 83, s. 8, or otherwise. *Falkner v. Grace*, 9 H. 280.

STATUTE OF LIMITATIONS.—3 & 4 Will. 4, c. 27, s. 42.—On a bill to enforce a charge acquired by a judgment creditor on the estate of the debtor, a receiver was appointed, and, at the hearing, a reference as to incumbrances on the estate was directed. A state of facts and claims carried in before the master under such inquiry by an incumbrancer, not a party to the suit, was held to take the charge as to the interest out of the Statute of Limitations (3 & 4 Will. 4, c. 27, s. 42,) and the incumbrancer was held to be entitled to arrears of interest for six years antecedent to the time of such claim. *Greenway v. Bromfield*, *Handley v. Wood*, 9 Hare, 201.

2. *Lunatic.*—A petition in lunacy after the death of the lunatic, by his committee, and a reference to the master thereon, followed by a report, finding that a sum of money had been expended by the committee in the maintenance of the lunatic, is not a proceeding which will take the claim of the committee out of the Statute of Limitations as against the heir at law of the lunatic, who was not a party to the application. *Wilkinson v. Wilkinson*, 9 Hare, 204.

SUBPENA.—Order for substituted service to appear and answer on alleged agent and receiver of defendants, who were mortgagees in possession. *Bankier v. Poole*, 3 De G. & S. 375.

TESTAMENTARY POWER.—*Execution of.*—The court has jurisdiction to decide upon the validity of the execution of a testamentary power over personalty, with reference to the state of the donee's mind at the time of the alleged execution. *Morgan v. Annis*, 3 De G. & S. 461.

TRADER DEBTOR.—*Bond.*—*Semble*, that the 79th section of the Bankrupt Law Consolidation Act, 1849, does not render it imperative upon the commissioners to require a trader, summoned under that section, to enter into a bond. Upon such a summons, if either the trader or the creditor tenders himself to be examined, his exami-

nation ought to be taken; but it is not incumbent on the court to hear any other witnesses. *Ex parte Sheward, In re Sheward*, 3 De G. & S. 609.

TRADING.—*Slander, action for.*—A barrister who took leases of three pieces of ground, and built houses upon them for the purpose of letting, held not to be a builder within the meaning of the bankrupt laws; but on it appearing that he had accepted a bill addressed to him by the description of "builder," and had brought an action for slander on the ground that the word complained of injured him as a trader, the fiat was annulled without costs. *Ex parte Stewart, In re Stewart*, 3 De G. & S. 557.

TRUSTEE ACT, 1850.—1. *Copyhold estate.*—Form of order appointing a new trustee of a copyhold estate, and appointing a person to complete the assurance of the estate to such new trustee. *In re Heys*, 9 H. 221.

2. *Disclaimer.*—The 32nd section of the Trustee Act, 1850, held, applicable to the case where all the original trustees had disclaimed. *Tyler's Trusts*, 21 L. J. (N. S.) Chanc. 16.

TRUSTEE AND CESTUI QUE TRUST.—1. A partner in a bank drew out part of a balance standing to the account of trustees of a will, under which he was interested, without the authority of the trustees, and invested it upon a canal mortgage, which was an unauthorized security: Held, on the bankruptcy of the bankers, that the cestui que trust were entitled to prove for the whole of the balance without giving up the canal mortgage. *Ex parte Biddulph, In re Biddulph, Ex parte Barnwell*, 3 De G. & S. 587.

2. *Same.*—A suggestion by the trustees of a fund, that the administrator of one of the cestui que trusts, who in that character was entitled to a distributive share of the fund, had unfairly obtained the letters of administration under which he claimed such share, is no defence in this court to the claim of the administrator; nor is it a defence for trustees to suggest that a deed under which the plaintiff derives his title from the cestui que trust, was founded on mistake, or is otherwise subject to be displaced, for it is contrary to the course of the court to direct an inquiry as to the validity or invalidity of a deed, upon a suggestion in the answer of defendants, the trustees of the fund to which it relates, where the ascertainment of the validity or invalidity of the deed is not essential to the safety of the defendants; and the fact of a bill having been filed to set aside the deed under which the claim is made, or exclude the fund in question from its operation, is not a ground upon which the trustees can resist the legal title to receive the fund; for the court cannot give the plaintiff in such other suit the benefit of an injunction to protect the fund upon the suggestion in the answer of the trustees; but the existence of such other suit entitles the trustees to retain such a portion of the trust fund as may be sufficient to answer their costs of such other suit. *Devey v. Thornton*, 9 Hare, 222.

VENDOR AND PURCHASER.—B. became the purchaser of premises at an auction, declaring himself the agent of C. in C.'s presence; but the vendors' solicitor required B. to sign the agreement, and declined to substitute the name of C. Communications afterwards took place between the vendors' solicitor and C. with reference to the title. The vendors afterwards brought their bill against B. and C. for specific performance of the contract: Held, that supposing B. to be the agent of C., yet the signature of B. to the contract made him personally liable to perform it; that the communication between the vendors' solicitor and the solicitor of C., with reference to the title, was not an adoption of C. as the purchaser in the place of B., but should be assumed to be made in furtherance of the original contract, in which, according to B.'s representation, he was (as between himself and C.) only a formal party; that the bill of the vendors having been dismissed against C. at his instance, C. would not be allowed to set up in a suit by B. against himself, that the decree against B. in the suit of the vendors had been improperly obtained in his absence; that the acceptance of the title by C. in such communications would not be binding upon B., for such acceptance would be regarded as having been made in C.'s own right, as claiming through B., and not as agent for B. A party claiming an interest in a purchase by virtue of a contract, as having been entered into on his behalf, is a proper party to a suit by the vendor for the specific performance of the contract; otherwise, if he claim merely as a sub-purchaser, *semble*. *Chadwick v. Maden*, 9 Hare, 188.

WASTE.—*Timber—Money in court—Accumulations, right to—Settled estates.*—Several persons were entitled successively to life estates in real property limited in strict settlement; they became bankrupt, and their assignees cut down timber left for ornament and shelter. Upon a bill filed on behalf of H. L., the then first tenant in tail in existence, who was an infant, the assignees were ordered to bring the money into court; this, with the accumulations, amounted to 26,133*l.* 2*s.* 10*d.* Two of the tenants for life died without issue; H. L. attained twenty-one, and being still the first tenant in tail, and entitled to the first estate of inheritance, he presented a petition for payment to him of the fund and the accumulations, which were ordered to be transferred to him. *Lushington v. Boldero*, 21 Law J. (N. S.) Chanc. 49.

WILL.—1. Testatrix gave legacies to her son John Bryan, and to her daughters, Ann the wife of James Winson, Harriet the wife of William Darnborough, and Mary the wife of William Dadley; and she gave her stock in the bank to her said daughter Mary Dadley for life, and after her death to be equally divided between the husbands of her said daughters and her sons, or such of them as might be living at Mary Dadley's decease. All the husbands named in the will survived the testatrix, but William Darnborough was the only one of them who survived Mary Dadley. Ann Winson, however, married a second time, and her second husband was living at Mary Dadley's death, and he claimed a share of the stock. But the court held, that

by the words "the husbands of my said daughters," the testatrix meant their husbands whom she had named, and therefore that William Darnborough was exclusively entitled to the stock. *In re Bryan's Trust*, 2 Sim. 103.

2. *Codicils*.—A testator made his will, duly attested so as to pass freehold estate, dated in 1828. In May, 1831, he made a codicil, which was attested by two witnesses only, declaring it to be a codicil to his will, and directing that it should be annexed thereto. This codicil varied the disposition of parts of his real estate. In September, 1831, he made a second codicil, duly attested so as to pass freehold estate, which he declared to be a second codicil to his will, and directed the same to be annexed thereto and taken as part thereof. The second codicil concluded by confirming his will: Held, that the second codicil gave the same effect to the first codicil as if it had been duly attested by three witnesses. *Aaron v. Aaron*, 3 De G. & S. 475.

3. *Construction—Election*.—A testator by will disposed of his own property, and then, by virtue of a power in his marriage settlement, appointed the trust property among six of his children nominatim in equal shares, and requested them "not to sink into or spend their respective shares, but to leave the same for the benefit of their respective children, and if any of them have no children, then to leave the same so that their share may go in the same as my general estate and effects are limited:" Held, that the words formed no part of the appointment; that they were inconsistent with the power; that no trust was raised for the grandchildren; that no case of election arose; and that the children were entitled to their shares absolutely. *Blachet v. Lamb*, 21 Law J. (N. S.) Chanc. 46.

4. *Construction—Power of sale—Charge of debts*.—A testator by his will appointed A., B. and C. to be his executors, in trust to dispose of his property in the following way. He then directed that all his debts should be discharged by his executors, and that the residue of his property, real and personal, should be disposed of by them at the time therein mentioned, save and except his estate at M., which he gave to A. for life, and at A.'s death to be disposed of as aforesaid: Held, that A., B. and C. had a power of sale of the estate at M., and that it was not necessary for them to show that there were any of the testator's debts left unpaid. *Mather v. Norton*, 21 Law J. (N. S.) Chanc. 15.

5. *Construction—Perpetual annuity*.—A testator by his will gave to E. L. 50*l.* per year for her and her children, and after her decease the money shall be paid to each of them as they attain the age of one-and-twenty; but if either of them die, to be paid to the survivor: Held, affirming a decision of the Master of the Rolls, that the bequest was of a perpetual annuity. *Potter v. Baker*, 21 Law J. (N. S.) Chanc. 11.

6. *Expression of intention*.—A testatrix bequeathed 3000*l.* to a legatee, whom she appointed her sole executrix; and 3000*l.* in addition for the care and trouble she would have in acting as executrix.

And the testatrix bequeathed all the rest, residue, and remainder of her personal estate to the same legatee, her executors, administrators and assigns, "well knowing" that she would make a good use and dispose of it in a manner in accordance with the testatrix's views and wishes. Among the testatrix's papers some writings were found, made after the passing of the Wills Act, but not attested as required by that statute, denoting several charitable as well as other gifts which the testatrix desired should be made. One of these was headed "My wishes": Held, that there was no sufficient expression of intention that the executrix should take the residue beneficially, and that she therefore held it in trust for the next of kin. Held also, that the unattested papers could not be looked at for the purpose of ascertaining what the testatrix's intentions were. *Briggs v. Penny*, 3 De G. & S. 525.

7. *Petitioners and respondents*.—Testator directed that a sum of stock standing in his name should be divided between and amongst the relations of his late wife in such manner, shares and proportions as would have been the case in case she had died possessed of it a spinster and intestate. The wife had sixteen next-of-kin living at her death. Five of them died before the testator: Held, that the eleven survivors took only a sixteenth each, and that the other five shares lapsed into the residue, and ought to bear the costs of the petitioners and respondents. *In re Ham's Trust*, 2 Sim. 106.

WILLS ACT.—*Residuary legatee*.—A testator having a general power of appointment over a sum of stock under the will of T. S., appointed the stock to her sons Joseph and John and her other children equally: and she left any other sum of money or property to which she then was, or might thereafter become, entitled to under the will of T. S., to be divided amongst such of her children as might be living at her death; and she constituted Joseph her residuary legatee. John died before her: Held, that Joseph was entitled to the share of the stock intended for John. *In re Spooner's Trust*, 2 Sim. 129.

WITNESS.—*Affidavits*.—Where it appeared upon affidavit that a material witness was going abroad, an order was made upon motion that the defendant should be at liberty to examine him *de bene esse*; and it was held not to be necessary that the affidavits should disclose the points to which it was proposed to examine the witness, or that he was the only witness who could give evidence on the points. *Grove v. Young*, 3 De G. & S. 397.

BANKRUPTCY.

CONTAINING THE CASES IN—21 Law J. (N. S.), part 3.

BANKRUPT LAW CONSOLIDATION ACT, 1849. — 1.
Advertisement of adjudication.—Four partners were adjudicated bankrupts. Two resided abroad. The adjudication was made on the 8th of November. On the 13th notice was given of an application, on behalf of the partners abroad, to suspend the advertisement. On the 17th the meeting was held to show cause against the issue of the advertisement and the application was then made. The commissioner refused to suspend the issue of the advertisement on the ground that, as the application was not made within seven days from the adjudication, he had no authority, under the 104th section of the 12 & 13 Vict. c. 106, to do so: Held, upon appeal, that “such extended time” mentioned in the section meant “further or longer time,” not exceeding fourteen days; and that the notice having been given within the seven days, everything was in fieri, and the commissioner had authority to grant the application. The matter was, therefore, sent back to the commissioner. *In re Castelli*, 21 Law J. (N. S.) Bank. 5.

2. Certificate.—The full Court of Appeal (Lord Justice Knight Bruce dubitante), held first, that, under the stat 12 & 13 Vict. c. 106, the commissioner may refuse protection to a bankrupt for other causes than for the commission of any of the offences enumerated in the 256th section; secondly, that the issue of the certificate of penalty, under the 257th section, depends upon the refusal of protection generally, and is not limited to such refusal for either of the offences enumerated in the preceding section; and thirdly, that the discretion vested with the commissioner by this statute in granting or withholding protection is very large, excepting in the cases enumerated in the 256th section, in which cases his functions are merely ministerial, and he is bound to refuse protection. *Ex parte Stanton, In re —*, 21 Law J. (N. S.) Bank. 7.

3. Notice of opposition.—A bankrupt was refused his certificate by the commissioner for an offence not enumerated in the 256th section of the statute 12 & 13 Vict. c. 106, namely, for systematically buying goods at a small price and short credit, and immediately selling the same at still lower prices. He was also refused any protection, except pending an appeal. On an appeal, the court refused to grant any certificate, but made an order, by the consent of the

assignees, giving protection for the person of the bankrupt, but leaving his property liable. A creditor who had not given three days' notice of opposition under the 198th section, and who was, therefore, refused a hearing, was not allowed to appear before the Appeal Court to discharge the above order of the commissioner. *In re Holt-house*, 21 Law J. (N. S.) Bank. 3.

4. *Payment of money out of court—Appeal.*—The primary jurisdiction in bankruptcy being by the 12th section of the statute 12 & 13 Vict. c. 106, transferred to the commissioners, and the jurisdiction of the Vice-Chancellor under that act having been exclusively appellate and transferred to the Court of Appeal by the stat. 14 & 15 Vict. c. 83, the Court of Appeal cannot order the payment of money out of the Bankruptcy Court, unless the application be made by way of appeal from a commissioner. *In re Cheetham*, 21 Law J. (N. S.) Bank. 5.

List of Cases.

COMMON LAW.

	PAGE		PAGE
Asplin v. Blackman, 21 L. J. (N.S.)		Steam Coal and Swansea and	
Exch. 78	62	Loughor Railway Company, 6	
Attorney-General v. Bradbury, 21		Exch. 269	58
L. J. (N. S.) Exch. 12	70	Fenn v. Bittleston, 21 L. J. (N.S.)	
Beamish v. Stoke (Overseers of), 21		Exch. 41	79
L. J. (N. S.) C. B. 9	71	Galsworthy v. Norman, 21 L. J.	
Bellamy v. Majoribanks, 21 L. J.		(N. S.) Q. B. 70	63
(N. S.) Exch. 70	58	Gough v. Tindon, 21 L. J. (N.S.)	
Boosey v. Davidson, 13 Q. B. 257 ..	60	Exch. 58	74
Bowen, In re, 21 L. J. (N.S.) Q. B.		Graham v. Gracie, 13 Q. B. 548 ..	65
10	74	Grange v. Trickett, 21 L. J. (N. S.)	
Bradfield v. Tupper, 21 L. J. (N.S.)		Q. B. 27	65
Exch. 6	68	Gregory v. Reg. 15 Q. B. 974	67
Breese v. Owens, 6 Exch. 413	80	Harris v. Great Northern Railway	
Burmester v. Norris, 21 L. J. (N.S.)		Company, 21 L. J. (N. S.)	
Exch. 43	68	C. B. 12	74
Butler, In re, 13 Q. B. 341	77	Hebblethwaite v. Leeds and Thirsk	
Chandos (Marquis of) v. Commis-		Railway Company, 21 L. J.	
sioners of Inland Revenue, 6		(N. S.) Exch. 37	57
Exch. 464	78	Hewitt v. Isham (Bart.), 21 L. J.	
Chippendale v. The Lancashire and		(N. S.) Exch. 35	66
Yorkshire Railway Company,		— v. Macquire, 21 L. J. (N.S.)	
21 L. J. (N. S.) Q. B. 22	59	Exch. 30	79
Cottee v. Richardson, 21 L. J. (N.S.)		Hutchinson v. Surrey Consumers	
Exch. 52	67	Gaslight and Coke Association,	
Cotterell v. Jones and Ablett, 21		21 L. J. (N.S.) C. B. 1	60
L. J. (N. S.) C. B. 2	72	Jones v. Broadhurst, 9 C. B. 173 ..	58
Daniels v. Charsley, 21 L. J. (N.S.)		— v. How, 9 C. B. 1	62
C. B. 38	61	— v. Phillips, 21 L. J. (N. S.)	
Davies v. Edwards, 21 L. J. (N.S.)		Exch. 6	68
Exch. 4	68	Kilham v. Collier, 21 L. J. (N. S.)	
De Bode (Baron) v. Reg., 13 Q. B.		Q. B. 65	64
364	62	Lancashire and Yorkshire Railway	
Doe d. Dixie v. Davies, 21 L. J.		Company v. East Lancashire	
(N. S.) Exch. 60	69	Railway, 21 L. J. (N. S.)	
— d. Lansdell v. Gower, 21 L. J.		(Exch.) 62	76
(N. S.) Q. B. 57	67	Lawrance v. Boston, 21 L. J. (N.S.)	
Doogood v. Rose, 9 C. B. 132	73	Exch. 49	69
Eaden v. Cooper, 21 L. J. (N. S.)		Marshall v. York, Newcastle and	
C. B. 32	70	Berwick Railway Company, 21	
East Anglian Railway Company v.		L. J. (N. S.) C. B. 34	59
Eastern Counties Railway Com-		Mouseley v. Ludlam, 21 L. J. (N.S.)	
pany, 21 L. J. (N. S.) C. B.		Q. B. 64	66
23	76	Nicholl v. Chambers, 21 L. J. (N.S.)	
Edwards v. Cameron's Coalbrook		C. B. 54	80

	PAGE		PAGE
Overton v. Freeman, 21 L. J. (N. S.)		Rogers v. Turner, 21 L. J. (N. S.)	
C. B. 52	74	Exch. 8	65
Palmer v. Richards, 6 Exch. 335 ..	63	Ruffey v. Henderson, 21 L. J. (N. S.)	
Percival v. Nanson, 21 L. J. (N. S.)		Q. B. 49	66
Exch. 1	63	Ryan v. Shilcock, 21 L. J. (N. S.)	
Phillips (Sir Thomas) v. Jones, 15		Exch. 55	62
Q. B. 859	64	Sturgis v. Curzon (Lord), 21 L. J.	
Pownall v. Dawson, 21 L. J. (N. S.)		(N. S.) Exch. 38	78
C. B. 14	70	Tetley v. Taylor, 21 L. J. (N. S.)	
— v. Hood, 21 L. J. (N. S.)		Q. B. 2	59
C. B. 12	71	Vauxhall Bridge Company v. Saw-	
Rees v. Williams, 21 L. J. (N. S.)		yer, 6 Exch. 504	58
Exch. 24	61	Wallington v. Dale, 6 Exch. 284 ..	72
Reg. v. Harrogate, 15 Q. B. 1012 ..	73	Wheatley (Bart.) v. Boyd, 21 L. J.	
— v. Hartlepool (Mayor of), 21		(N. S.) Exch. 39	62
L. J. (N. S.) Q. B. 71	70	Wilson (Executor) v. Dunn, 21	
— v. The Master, Fellows and		L. J. (N. S.) Q. B. 60	80
Assistants of the College of		Yerke v. Smith, 21 L. J. (N. S.)	
God's Gift in Dulwich, 21 L. J.		Q. B. 63	63
(N. S.) Q. B. 36	61	Young v. Clare Hall (Masters,	
Reimer v. Ringrose, 6 Exch. 263 ..	66	Fellows and Scholars of), 21	
		L. J. (N. S.) Q. B. 12	79

CRIMINAL AND MAGISTRATES.

Davies v. South Staffordshire Rail-		Reg. v. Trentmere (Inhabitants of),	
way Company, 21 L. J. (N. S.)		21 L. J. (N. S.) M. C. 13	84
M. C. 52	82	— v. Much Hoole (Overseers of),	
Hulse, Ex parte, 21 L. J. (N. S.)		21 L. J. (N. S.) M. C. 1	83
M. C. 21	82	— v. Newman, 21 L. J. (N. S.)	
Killymaenllwydd v. St. Michael's,		M. C. 75	84
Pembroke, 21 L. J. (N. S.)		— v. St. Andrew's, Holborn (In-	
M. C. 79	81	habitants of), 21 L. J. (N. S.)	
Reg. v. Caudwell, 21 L. J. (N. S.)		M. C. 69	83
M. C. 48	82	— v. St. Giles, Without, Cripple-	
— v. East London Waterworks		gate (Inhabitants of), 21 L. J.	
Company, 21 L. J. (N. S.)		(N. S.) M. C. 26	84
M. C. 49	86	— v. St. Martin's in the Fields,	
— v. Gaskill, 21 L. J. (N. S.)		(Churchwardens and Overseers	
M. C. 29	85	of), 21 L. J. (N. S.) M. C. 53 ..	86
— v. Hartfield (Overseers of), 21		— v. St. Peter's in Barton-on-	
L. J. (N. S.) M. C. 65	83	Humber, 21 L. J. (N. S.) M. C.	
— v. Hellier, 21 L. J. (N. S.)		23	82
M. C. 3	82		

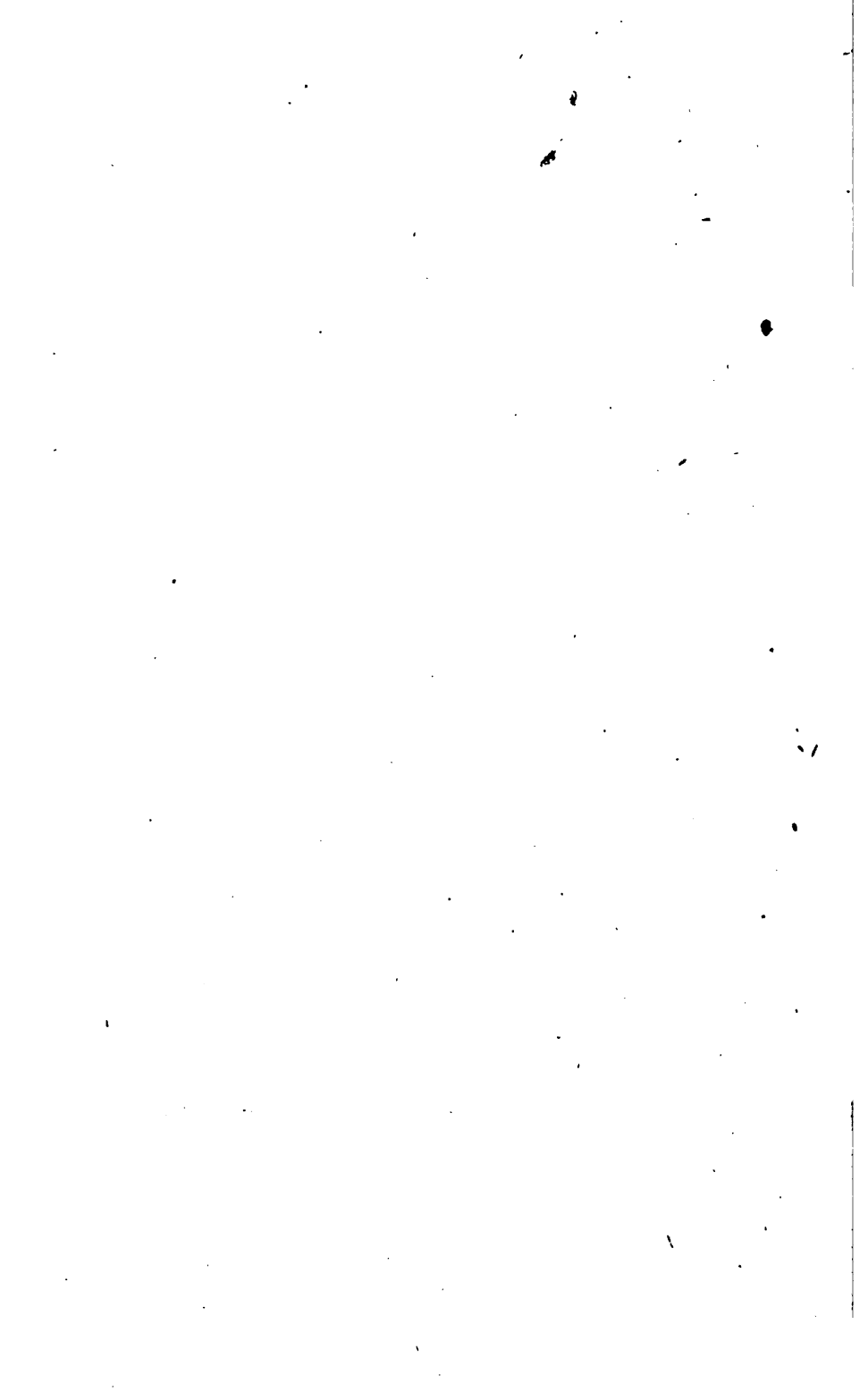
EQUITY.

	PAGE		PAGE
Aaron v. Aaron, 3 De G. & S. 478..	105	Falkener v. Grace, 9 H. 280	102
Addison, Ex parte, 3 De G. & S. 580.	88	Golder v. Golder, 9 H. 276	87
Anderson, Ex parte, 3 De G. & S. 600	93	Goode v. West, 21 L. J. (N. S.)	
— v. Guichard, 9 H. 275 ..	97	Chanc. 127	90
Attorney-General v. Dew, 3 De G.		Gore v. Harris, 21 L. J. (N. S.)	
& S. 488	91	Chanc. 10	101
— v. Worcester (Bishop of),		Greenway v. Bromfield; Handley	
21 L. J. (N. S.) Chanc. 25 ..	90	v. Wood, 9 H. 201	102
Bankier v. Poole, 3 De G. & S. 375.	102	Grove v. Young, 3 De G. & S. 397.	106
Barnard v. Papineau, 3 De G. & S.		Ham's Trust, In re, 2 S. 106	106
498	97	Harmer v. Gooding, 3 De G. & S.	
Baxter v. Losh, 21 L. J. (N. S.)		407	96
Chanc. 55	93	Hayward v. Purssey, 3 De G. & S.	
Bellas v. Harmer (Bart.), 3 De G.		399	96
& S. 454	95	Hewitt v. Loosemore, 21 L. J. (N. S.)	
Biddulph (Ex parte), 3 De G. & S.		Chanc. 69	101
587	103	Heys, In re, 9 H. 221	103
Blacket v. Lamb, 21 L. J. (N. S.)		Hookins, Ex parte, 3 De G. & S.	
Chanc. 46	105	549	98
Blind School v. Goren, 21 L. J.		Jillard v. Edgar, 3 De G. & S. 602.	93
(N. S.) Chanc. 144	94	Keightley, Ex parte, 3 De G. & S.	
Bourne v. Buckton, 2 Sim. 91	86	583	94
Briggs v. Penny, 3 De G. & S. 525.	106	Knowles, In re, 21 L. J. (N. S.)	
Brown, Ex parte, 3 De G. & S. 590.	99	Chanc. 142	94
Bruce v. Elwin, 9 H. 294	97	Lambert v. Newark, 3 De G. & S.	
Bryan's Trust, In re, 2 Sim. 103 ..	105	405	98
Burd, In re, 9 H. 289	94	Lord, Ex parte, 3 De G. & S. 607 .	87
Burgess v. Sturgis, 21 L. J. (N. S.)		Lushington v. Boldero, 21 L. J.	
Chanc. 53	90	(N. S.) Chanc. 49	104
Burton, Ex parte, 3 De G. & S. 579.	97	Manchester, Sheffield and Lincoln-	
Caldwell v. Van Vlissingen, 21 L. J.		shire Railway Company v. The	
(N. S.) Chanc. 97	92	Great Northern Railway Com-	
Carrington v. Pell, 3 De G. & S. 512	97	pany, 9 Hare, 284	99
Carruthers, Ex parte, 3 De G. & S.		Masselin's Trusts, In re, 21 L. J.	
570	88	(N. S.) Chanc. 53	98
Chadwick v. Maden, 9 H. 188	104	Mather v. Norton, 21 L. J. (N. S.)	
Cheetham v. Sturtevant, 3 De G. & S.		Chanc. 15	105
468	100	Miller, Ex parte, 3 De G. & S. 553.	98
Chepstow, Gloucester and Forest of		Morgan v. Annis, 3 De G. & S. 461.	102
Dean Railway Company, In re,		Mullock v. Jenkins, 21 L. J. (N. S.)	
2 Sim. 11	92	Chanc. 65	88
Chesterman v. Mann, 9 H. 206. ..	100	Newton, Ex parte, 3 De G. & S. 584.	87
Collett v. Morrison, 9 H. 162	96	Parker, Ex parte, 3 De G. & S. 575.	88
Cooke, In re, 21 L. J. (N. S.)		Parkin v. Thorold, 2 Sim. 1	101
Chanc. 145	88	Pennell, Ex parte, 3 De G. & S. 555.	95
Creasor v. Robinson, 21 L. J. (N. S.)		Potter v. Baker, 21 L. J. (N. S.)	
Chanc. 64	87	Chanc. 11	105
Cross v. Bevan, 2 Sim. 53	87	Powell v. Hall, 3 De G. & S. 456..	95
Dakin v. London and North West-		Price v. Griffith, 21 L. J. (N. S.)	
ern Railway Company, 3 De		Chanc. 78	102
G. & S. 415	92	Rudd v. Speare, 3 De G. & S. 374..	93
Davies, Ex parte, 2 Sim. 114.	91	Russell v. Jackson, 21 L. J. (N. S.)	
Devey v. Thornton, 9 H. 222	103	Chanc. 146	101
Evans, Ex parte, 3 De G. & S. 561.	98	Sheward, Ex parte, 3 De G. & S.	
Eyton v. Mostyn, 3 De G. & S. 518.	97	609	103

	PAGE		PAGE
Sims v. Helling, 21 L. J. (N. S.)		Tyler's Trusts, In re, 21 L. J. (N. S.)	
Chanc. 76	93	Chanc. 16	103
Soltau v. De Held, 2 Sim. 133	91	Waterhouse v. Stansfield, 9 H. 234 .	90
Spicer, Ex parte, 3 De G. & S. 601.	87	Whitfield v. Lequeutre, 3 De G. & S.	
Spooner's Trust, In re, 2 Sim. 129 .	106	464	99
Stewart, Ex parte, 3 De G. & S. 557.	103	Whitmore, In re, 3 De G. & S. 565 .	99
Terrell's case, In re, 2 Sim. 126 ..	92	Wilkinson v. Fowkes, 9 H. 193....	95
Thistlethwaite v. Garmer, 21 L. J.		— v. Wilkinson, 9 H. 204..	102
(N. S.) Chanc. 16.....	98	Williams v. Chard, 21 L. J. (N. S.)	
Tomlinson, In re, 3 De G. & S. 371.	91	Chanc. 8.....	100
Trye v. Gloucester (Corporation of),		Winthrop v. Elderton, 21 L. J.	
21 L. J. (N. S.) Chanc. 81 ..	89	(N. S.) Chanc. 145.....	94

BANKRUPTCY.

Castelli, In re, 21 L. J. (N. S.)		Holthouse, In re, 21 L. J. (N. S.)	
Bank. 5	107	Bank. 3	108
Cheetham, In re, 21 L. J. (N. S.)		Stanton, Ex parte, 21 L. J. (N. S.)	
Bank. 5	108	Bank. 7	107



Standard Law Library



3 6105 062 734 814

